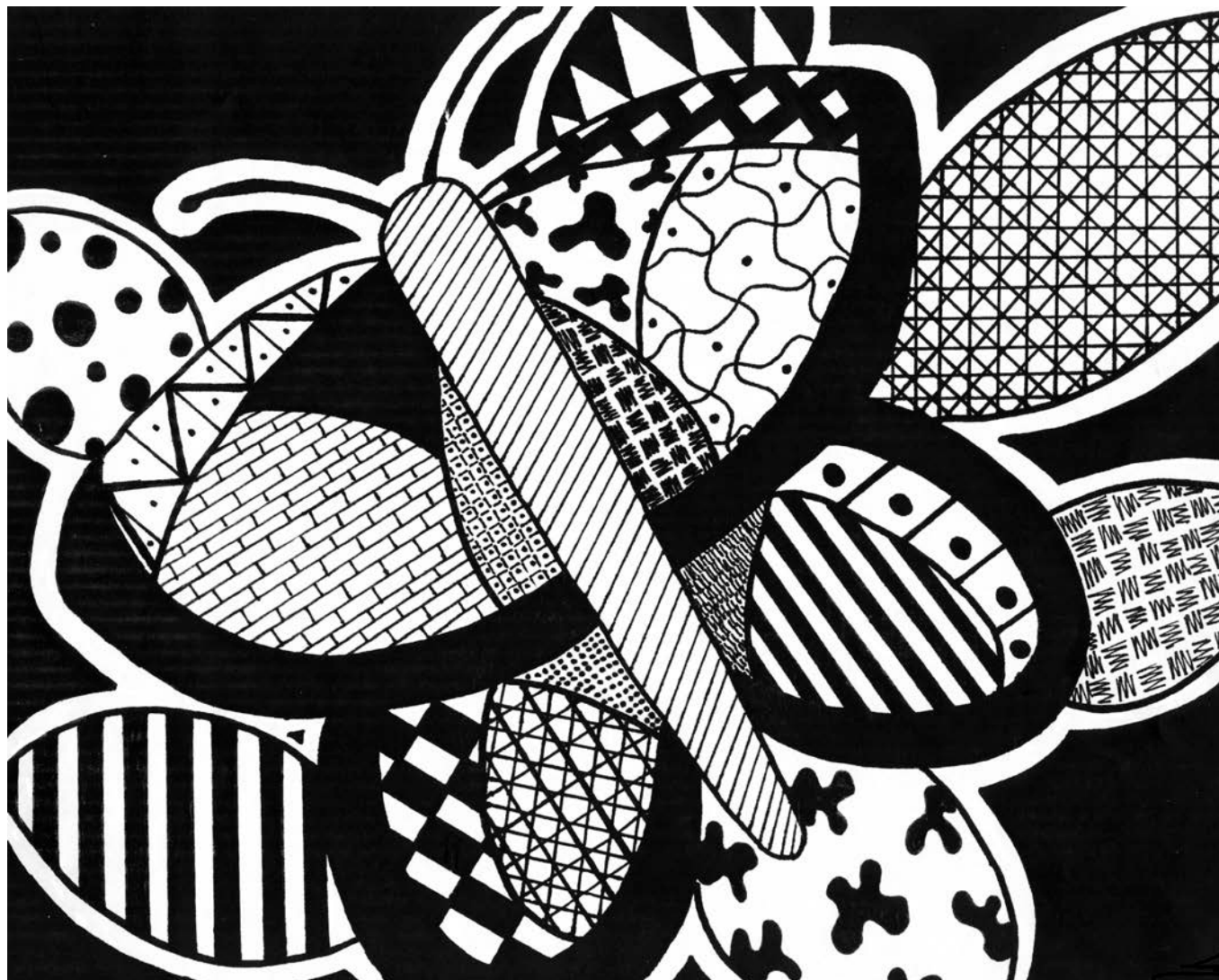

TEXAS REGISTER

Volume 38 Number 26

June 28, 2013

Pages 4053 -



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
John Steen

Director –
Dan Procter

Staff
Patricia Aguirre-Busch
Leti Benavides
Dana Blanton
Elaine Crease
Kris Hogan
Roberta Knight
Jill S. Ledbetter
S. Gail Woods
Mirand Zepeda-Jaramillo

IN THIS ISSUE

GOVERNOR

Appointments	4059
Proclamation 41-3326	4059
Proclamation 41-3327	4059

EMERGENCY RULES

COMPTROLLER OF PUBLIC ACCOUNTS

PROPERTY TAX ADMINISTRATION

34 TAC §9.804	4061
---------------------	------

TEACHER RETIREMENT SYSTEM OF TEXAS

HEALTH CARE AND INSURANCE PROGRAMS

34 TAC §41.41	4065
---------------------	------

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §352.17	4067
---------------------	------

MEDICAID MANAGED CARE

1 TAC §§353.903, 353.905, 353.907, 353.913	4069
--	------

MEDICAID HEALTH SERVICES

1 TAC §354.1601, §354.1602	4074
1 TAC §354.1611, §354.1613	4075
1 TAC §354.1621, §354.1622	4076
1 TAC §§354.1632 - 354.1635	4077

REIMBURSEMENT RATES

1 TAC §355.112	4082
1 TAC §355.307	4092
1 TAC §355.503, §355.507	4097
1 TAC §355.7103	4101
1 TAC §355.8052, §355.8060	4110
1 TAC §355.8054, §355.8055	4118
1 TAC §355.8061	4118
1 TAC §355.8204	4122

TEXAS HISTORICAL COMMISSION

PUBLICATIONS

13 TAC §23.1	4123
--------------------	------

TEXAS LOTTERY COMMISSION

ADMINISTRATION OF STATE LOTTERY ACT

16 TAC §401.315	4124
16 TAC §401.320	4128

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

REGISTERED INTERIOR DESIGNERS

22 TAC §5.31	4129
22 TAC §5.51	4131

ADMINISTRATION

22 TAC §7.10	4132
--------------------	------

STATE BOARD OF DENTAL EXAMINERS

DENTAL LICENSURE

22 TAC §101.10	4133
----------------------	------

TEXAS STATE BOARD OF PHARMACY

ADMINISTRATIVE PRACTICE AND PROCEDURES

22 TAC §281.6	4134
22 TAC §281.22	4135
22 TAC §281.63	4135
22 TAC §281.66	4136
22 TAC §281.67	4136

PHARMACIES

22 TAC §291.34	4137
----------------------	------

DEPARTMENT OF STATE HEALTH SERVICES

TEXAS HIV MEDICATION PROGRAM

25 TAC §§98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13	4148
25 TAC §§98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, 98.118	4151

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE

31 TAC §51.80	4153
---------------------	------

FINANCE

31 TAC §53.50	4156
---------------------	------

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.72	4157
34 TAC §3.828	4160

TEACHER RETIREMENT SYSTEM OF TEXAS

HEALTH CARE AND INSURANCE PROGRAMS

34 TAC §41.41	4162
---------------------	------

TEXAS COMMISSION ON LAW ENFORCEMENT

TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.9	4163
---------------------	------

LICENSING REQUIREMENTS

37 TAC §217.2	4164
37 TAC §217.11	4165
PROFICIENCY CERTIFICATES	
37 TAC §221.7	4167
TEXAS COMMISSION ON JAIL STANDARDS	
NEW CONSTRUCTION RULES	
37 TAC §259.143	4167
37 TAC §259.150	4168
37 TAC §259.239	4168
37 TAC §259.246	4169
37 TAC §259.333	4169
37 TAC §259.340	4169
37 TAC §259.432	4170
37 TAC §259.438	4170
37 TAC §259.745	4171
37 TAC §259.752	4171
COUNTY CORRECTIONAL CENTERS	
37 TAC §260.137	4171
37 TAC §260.144	4172
ADMISSION	
37 TAC §265.1	4172
37 TAC §265.2	4173
37 TAC §265.11	4173
SUPERVISION OF INMATES	
37 TAC §275.3	4173
TEXAS JUVENILE JUSTICE DEPARTMENT	
RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES	
37 TAC §380.8761	4174
DEPARTMENT OF AGING AND DISABILITY SERVICES	
CONTRACTING FOR COMMUNITY CARE SERVICES	
40 TAC §§49.71 - 49.73	4174
DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES	
DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES	
40 TAC §§108.1403, 108.1413, 108.1415, 108.1419, 108.1427 ...	4176

WITHDRAWN RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.112	4181
1 TAC §355.7103	4181

ADOPTED RULES

TEXAS JUDICIAL COUNCIL

REPORTING REQUIREMENTS

1 TAC §171.7	4183
--------------------	------

TEXAS EDUCATION AGENCY

ASSESSMENT

19 TAC §101.3022	4185
19 TAC §101.3041	4185

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

ARCHITECTS

22 TAC §1.191	4186
---------------------	------

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.811	4186
34 TAC §3.834	4186

TEXAS COMMISSION ON JAIL STANDARDS

RULEMAKING PROCEDURES

37 TAC §255.4	4187
---------------------	------

CONSTRUCTION APPROVAL RULES

37 TAC §257.9	4188
---------------------	------

NEW CONSTRUCTION RULES

37 TAC §259.115	4188
37 TAC §259.216	4188
37 TAC §259.223	4188
37 TAC §259.313	4189
37 TAC §259.318	4189
37 TAC §259.413	4189
37 TAC §259.418	4189
37 TAC §259.514	4190
37 TAC §259.614	4190
37 TAC §259.715	4190
37 TAC §259.722	4190

COUNTY CORRECTIONAL CENTERS

37 TAC §260.113	4191
37 TAC §260.118	4191

EXISTING CONSTRUCTION RULES	
37 TAC §261.115.....	4191
37 TAC §261.122.....	4192
37 TAC §261.215.....	4192
37 TAC §261.222.....	4192
37 TAC §261.312.....	4192
37 TAC §261.317.....	4193
RULE REVIEW	
Adopted Rule Reviews	
Texas State Library and Archives Commission.....	4195
Texas State Soil and Water Conservation Board	4195
TABLES AND GRAPHICS	
.....	4197
IN ADDITION	
Comptroller of Public Accounts	
Local Sales Tax Rate Change Notice Effective July 1, 2013.....	4205
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	4205
Credit Union Department	
Application to Amend Articles of Incorporation.....	4206
Applications to Expand Field of Membership.....	4206
Notice of Final Action Taken.....	4206
Education Service Center Region 11	
Notice of Board Vacancy	4207
Texas Commission on Environmental Quality	
Agreed Orders	4207
Notice of Water Quality Applications.....	4211
Notice of Water Rights Application.....	4213
Request for Nominations - Municipal Solid Waste Management and Resource Recovery Advisory Council.....	4213
General Land Office	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	4214
Notice of Approval of Coastal Boundary Survey.....	4215
Texas Health and Human Services Commission	
Notice of Public Hearing on Proposed 24-Hour Residential Child Care Payment Rates.....	4215
Notice of Public Hearing on Proposed Attendant Compensation Payment Rates.....	4215
Notice of Public Hearing on Proposed Medicaid Payment Rate for Truman W. Smith Children's Care Center	4216

Notice of Public Hearing on Proposed Medicaid Payment Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability	4217
Notice of Public Hearing on Proposed Medicaid Payment Rates for Supported Employment, Employment Assistance and Consumer Directed Services	4217
Notice of Public Hearing on Proposed Medicaid Payment Rates for Texas Home Living.....	4218
Notice of Public Hearing on Proposed Nursing Facility Payment Rates.....	4218
Notice of Public Hearing on Proposed Youth Empowerment Services Waiver Payment Rates	4219
Department of State Health Services	
Amendment to the Schedules of Controlled Substances	4219
Licensing Actions for Radioactive Materials	4221
Heart of Texas Council of Governments	
9-1-1 Voice Recording Demonstrations.....	4225
Texas Department of Housing and Community Affairs	
Notice of Public Hearings for the Community Services Block Grant State Application and Plan for Fiscal Years 2014 - 2015	4225
Release of 2013 Notice of Funding Availability for the Redevelopment of a Site Located in Dickinson, Texas	4226
Texas Lottery Commission	
Instant Game Number 1526 "Wild Winnings"	4226
Instant Game Number 1569 "I Love Cash"	4231
Notice of Public Comment Hearing.....	4235
North Central Texas Council of Governments	
Request for Proposals for the Blacklands Corridor Feasibility Study	4235
Public Utility Commission of Texas	
Announcement of Application for a State-Issued Certificate of Franchise Authority.....	4236
Announcement of Application for a State-Issued Certificate of Franchise Authority.....	4236
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	4236
Notice of Application for Review of the Cost of Decommissioning	4236
Notice of Application for Waiver from Requirements.....	4237
Notice of Application for Waiver from Requirements.....	4237
Notice of Application for Waiver from Requirements.....	4237
Notice of Application for Waiver from Requirements.....	4238
Notice of Application for Waiver from Requirements.....	4238
Notice of Application for Waiver from Requirements.....	4238

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 10, 2013

Designating Thomas G. Prothro as presiding officer of the Texas State Board of Public Accountancy for a term to expire at the pleasure of the Governor. Mr. Prothro is replacing A. Carlos Barrera of Brownsville as presiding officer.

Appointments for June 14, 2013

Appointed to the State Independent Living Council for a term to expire October 24, 2015, James "Jim" Brocato of Beaumont (replacing Peggy Cosner of Belton whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2015, John Hobgood of Lubbock (pursuant to the U.S. Rehabilitation Act).

Appointed to the State Independent Living Council for a term to expire at the pleasure of the Governor, Amy Kantoff of Pflugerville (replacing Lance Hamilos of Round Rock).

Appointed to the State Independent Living Council for a term to expire at the pleasure of the Governor, Laurie Pryor of Fort Worth (replacing Elizabeth Dennis of Austin).

Rick Perry, Governor

TRD-201302566



Proclamation 41-3326

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta,

Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of June, 2013.

Rick Perry, Governor

TRD-201302567



Proclamation 41-3327

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, DAVID DEWHURST, Lieutenant Governor of Texas as Acting Governor, do hereby certify that the severe flooding that occurred on June 14-15, 2013, has caused a disaster in Maverick County in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such

threat, and direct that all necessary measures both public and private as authorized under Section 418.017 of the Code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of the State to be affixed at my office in the City of Austin, Texas, this the 15th day of June, 2013.

David Dewhurst, Lieutenant Governor of Texas

As Acting Governor

TRD-201302568

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §9.804, concerning arbitration of appraisal review board determinations.

This amendment is adopted on an emergency basis to implement provisions of House Bill 585, effective June 14, 2013, Senate Bill 1662, effective January 1, 2014, with provisions that duplicate House Bill 585, and Senate Bill 1255, effective June 14, 2013, all passed by the 83rd Legislature, 2013. House Bill 585 and Senate Bill 1662 repeal the provision for expedited arbitration and Senate Bill 1255 provides for appeal through binding arbitration of appraisal review board orders determining protests filed under Tax Code §41.41(a)(2). The comptroller is filing this emergency amendment, effective June 15, 2013, because the provisions of House Bill 585, that are duplicated in Senate Bill 1662, and Senate Bill 1255 became effective immediately and the current provisions of §9.804, including forms adopted by reference, are in conflict with the provisions of the newly enacted legislation.

The amendment is adopted on an emergency basis under Tax Code, §41A.13 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 41A.

The amendment implements Tax Code, §41A.01 and §41A.03.

§9.804. Arbitration of Appraisal Review Board Determinations.

(a) Definitions and instructions. In this section:

(1) "Owner" means a person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) "Agent" means an individual for whom written authorization has been granted in accordance with the terms of this subsection and includes the following: an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Oc-

cupations Code, Chapter 901. An agent, other than an attorney, may not take any action relating to binding arbitration on behalf of an owner without a completed authorization form prescribed by the comptroller. The authorization form must be signed by the owner and specify the actions that the agent is authorized to take on behalf of the owner with respect to binding arbitration. Authorized actions that must be identified on the form include whether or not the agent has the authority to sign the request for binding arbitration, whether or not the agent has the authority to receive deposit refunds, and whether or not the agent has the authority to represent the owner in the arbitration proceeding. The authorization must identify as an agent a specific individual and identify the agent's license or certificate number and applicable licensing board pertaining to the license or certificate under which the agent is qualified to represent the owner pursuant to Tax Code, §41A.08. An authorization identifying a business entity is not valid; identification of an individual meeting the qualifications of Tax Code, §41A.08 is required. If an owner authorizes an agent to receive deposit refunds, the authorization must include the agent's social security number, federal tax identification number, or Texas state tax identification number. If the owner has no agent, all correspondence from the comptroller regarding the arbitration will be sent to the owner. If the owner has authorized an agent to receive deposit refunds as provided in this section, all correspondence from the comptroller regarding the arbitration will be sent to the authorized agent. In order for an agent to represent an appraisal district, other than an attorney or an employee of the appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.

(3) "Binding arbitration" means a forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) "Appraised value" has the meaning included in Tax Code, §1.04(8).

(5) "Market value" has the meaning included in Tax Code, §1.04(7).

(6) "Appraisal district" has the meaning included in Tax Code, §6.01.

(7) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by the comptroller with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is

\$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is \$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13. A ~~[protest concerning unequal appraisal, a]~~ motion for correction of an appraisal roll, a protest concerning the qualification of property for exemption or special appraisal, or any other issue not specified in Tax Code, §41.41(a)(1) or (2) cannot be appealed through binding arbitration.

(3) A request for binding arbitration must be made on the form prescribed by the comptroller and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner as described in this section that specifically authorizes the agent to file the request must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit in the applicable amount as provided by Tax Code, §41A.03 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The request for binding arbitration with the applicable deposit and, if applicable, the agent authorization form must be timely submitted to the appraisal district by hand delivery or by certified first-class mail. ~~[Subject to all provisions set forth in this section, a property owner may request expedited arbitration as provided by Tax Code, §41A.031.]~~

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested in writing by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with the procedures and forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by the comptroller; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller with each request a copy of the order determining protest or, in the case of an appeal relating to contiguous properties pursuant to Tax Code, §41A.03, a copy of each order determining protest. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to timely file the request for arbitration and the applicable deposit with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the

denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the appraisal review board to be valued at \$1 million or less or property that qualifies as the owner's residence homestead under Tax Code, §11.13, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the comptroller's prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller providing all requested information and documentation and affirming that the applicant meets the qualifications set forth in Tax Code, §41A.06. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has all of the qualifications required under Tax Code, §41A.06, agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the applicable arbitration deposit, and agrees to promptly notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, to be included in the registry. For an arbitrator to continue to be included in the registry, a new application must be submitted on or before the earlier of each renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, or the second anniversary of the date the arbitrator was initially added to or subsequently renewed on the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, Chapter 41A, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration

registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2) The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district.

The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin upon a showing, supported by competent evidence, that the assigned arbitrator has an interest in the outcome of the arbitration or that the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If the comptroller does not receive from the arbitrator written notification of acceptance or refusal of the appointment within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt, or the determination pursuant to this subsection, of the arbitrator's refusal. The process of appointment of arbitrators pursuant to this subsection shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. Unless the property owner and the appraisal district both agree to arbitration by submission of written documents, the arbitration will be conducted in person or by teleconference. An arbitrator may require that the arbitration be conducted

in person. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause. The arbitrator must, by written procedures delivered in advance to the parties, require that the parties produce and exchange evidence prior to the hearing.

(2) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver written procedures to be used at the hearing. The parties shall be allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator.

(3) The parties to an arbitration proceeding may represent themselves or may be represented by an agent as provided by Tax Code, §41A.08 with timely, written authorization as provided in this section. If an agent was not identified in the request for binding arbitration for purposes of representing an owner in the arbitration proceeding, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding. Such written authorization must be made on the comptroller-prescribed agent authorization form, must be signed by the owner, and may provide only for the agent to represent the owner at the arbitration proceeding. Any deposit refund will be processed in accordance with the original request for binding arbitration. No written authorization is required for an attorney to represent a party at an arbitration proceeding.

(4) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5) The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the appraisal review board order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property at issue in the pending arbitration. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each appraisal review board order appealed must be a determination of a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; however, the combined total value of all orders appealed may exceed \$1 million, whether or not the appeal involves a property that qualifies as owner's residence homestead. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), the arbitrator shall dismiss a pending arbitration action with prejudice if it is

determined during the proceedings that taxes on any property subject to the appeal are delinquent; that any of the appraisal review board orders appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of any property at issue in the pending arbitration.

(7) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration and may only include in the award the remedy provided by Tax Code, §42.25.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by the comptroller and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) Payment of arbitrators' fees and arbitration deposit refunds will be processed in accordance with the provisions of Tax Code, §41A.09. An award that determines an appraised or market value at an amount exactly one-half of the difference in value between the property owner's opinion of value as stated in the request for binding arbitration and the value determined by the appraisal review board is deemed to be nearer the appraisal review board's determination of value. The comptroller will retain 10% of each deposit for administrative costs.

(4) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(5) An owner or agent may withdraw a request for arbitration only by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall pay the fee, if any, charged by the arbitrator. The fee will be paid from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than 90% of the owner's deposit, the comptroller shall refund to the owner or agent any remaining deposit, less 10% retained by the comptroller for administrative costs. If the arbitrator's fee is 90% of the owner's deposit, the comptroller shall retain 10% of the deposit for administrative costs and no refund will be paid.

(6) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller's form for request for binding arbitration will require identification of the social security number or tax identification number of the individual authorized to receive deposit refunds. For an owner, the owner is required to provide the owner's social security number, federal tax identification number, or Texas state tax identification number. If an agent has been authorized by the owner to receive deposit refunds, the agent is required to provide the agent's social security number, federal tax identification number, or Texas state tax identification number. Deposit refunds will not be processed without the required identification. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) Pending Arbitrations. No party to an arbitration including, but not limited to, a property owner, a property owner's agent, an appraisal district, or an arbitrator, may seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A. An arbitration is pending from the date a request for arbitration is filed and continues until delivery of the arbitrator's final award pursuant to Tax Code, §41A.09. The prohibition in this subsection shall not apply to administrative matters assigned to the comptroller, such as processing of arbitration requests and deposits.

(i) Forms Adopted by Reference. The Comptroller of Public Accounts adopts by reference the Request for Binding Arbitration form and the Arbitration Determination and Award form. Copies of these

forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) Other Forms. All other comptroller forms applicable to this section may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 15, 2013.

TRD-201302479

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: June 15, 2013

Expiration date: October 12, 2013

For further information, please call: (512) 475-0387

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.41

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amended §41.41, concerning premium payments under TRS-ActiveCare, the health benefits program for eligible employees of participating public school districts and other entities and covered dependents. The amended section is adopted on fewer than 30 days' notice and takes effect immediately. The emergency adoption requires entities participating in TRS-ActiveCare to remit payment of premiums due on or before the 15th day of each month in which TRS or Blue Cross and Blue Shield of Texas (BCBSTX) issues the bill to the participating entity, beginning with bills generated on or after September 1, 2013. TRS finds that the emergency adoption is needed to ensure the solvency of the TRS-ActiveCare. The emergency adoption is also needed to provide adequate notice and guidance on the new payment deadline so affected entities may take measures now to comply with the amended section.

On or about the 15th of each month, TRS or the administering firm (i.e., BCBSTX) sends bills for premiums to participating entities in TRS-ActiveCare. The bill is issued for that month of coverage. Before the emergency adoption of amendments to §41.41, each participating entity had to remit payment on or before the sixth day after the last day of each month in which TRS or BCBSTX issued the bill to the participating entity. Because the bill is issued in the month for which coverage is provided, premium payments have been rendered a month in arrears.

During the current plan year, TRS-ActiveCare has experienced an unexpectedly high level of claims. This high level of claims has placed the solvency of the TRS-ActiveCare fund at risk. This risk constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare. Insolvency would mean TRS-ActiveCare could not pay the health benefit claims of its enrollees. Providers of medical and pharmaceutical services would also be at risk of not being paid.

As a result, TRS amends §41.41 on an emergency basis to require that each participating entity remit payment on or before the 15th day of each month in which TRS or BCBSTX issues the bill to the participating entity, beginning with bills generated on or after September 1, 2013. By moving the due date of each bill forward in time by approximately three weeks, the amendment moves the payment from a month in arrears to the month of coverage. With this change, the risk to the solvency of the TRS-ActiveCare fund will be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare will be eliminated. Further, the emergency adoption will provide BCBSTX and the participating entities in TRS-ActiveCare sufficient notice, direction, and instruction in complying with the new payment requirements and procedures.

TRS is also proposing amendments to §41.41 for permanent adoption in this issue of the *Texas Register*.

Statutory Authority. The amendments are adopted on an emergency basis under Insurance Code §1579.052 and Government Code §2001.034. Section 1579.052 of the Insurance Code authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary and to adopt rules to administer the program. Section 2001.034 of the Government Code authorizes TRS to adopt administrative rules on an emergency basis without prior notice and hearing under certain statutorily specified circumstances, including a finding that there is imminent peril to the public health, safety, or welfare.

Cross-reference to statute. The adopted amendments affect Insurance Code §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

§41.41. Premium Payments.

(a) For each bill generated by TRS or its designee on or before August 31, 2013, each [Each] participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (*e.g.*, currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.

(b) For each bill generated by TRS or its designee on or after September 1, 2013, each participating entity shall remit to TRS the

amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the fifteenth day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (*e.g.*, currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.

(c) [(b)] A participating entity will be billed for all full-time and part-time employees enrolled in TRS-ActiveCare who were employed by the participating entity on the date that TRS or its designee generates the bill for that billing month as reported by the participating entity. In addition, a participating entity will be billed retroactively for all full-time and part-time employees who enroll after the date on which the bill is generated for that month and choose coverage for that month. A participating entity will also be billed for any individual covered in accordance with §41.40 of this title (relating to Coverage Continuation While on Leave Without Pay[-]), Participating entities are responsible for collecting all applicable premiums and other costs that are required to be paid by its full-time employees, part-time employees, and any individuals covered in accordance with §41.40 of this title. A participating entity shall remit the full amount billed each month.

(d) [(e)] Participating entities shall not modify the amount of any bill or remit any amount different from the amount billed. A participating entity shall report adopted adjustments, including those seeking credit for terminated employees, to the administering firm no later than the 45th day after the billing date. TRS may reject any adopted adjustments that are inappropriate or untimely, including those adjustments seeking credit for terminated employees reported later than 45 days after the billing date on which the employee was first incorrectly reported as eligible for coverage. Approved adjustments will be reflected on a subsequent bill.

(e) [(4)] TRS may take corrective action against a participating entity that fails to remit payment in accordance with the timelines and other requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302476

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Effective date: June 14, 2013

Expiration date: October 11, 2013

For further information, please call: (512) 542-6438

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §352.17

The Texas Health and Human Services Commission (HHSC) proposes to amend §352.17, concerning Out-of-State Medicaid Provider Eligibility.

Background and Justification

Senate Bill 1401, 83rd Texas Legislature, Regular Session, 2013, amended Subchapter B, Chapter 531, Government Code, by adding §531.066 to authorize enrollment of laboratories as in-state providers in the Texas Medicaid program, regardless of where the facility is located and under certain conditions. The provisions of this amendment contemplate that the overwhelming majority of the requests for reimbursement from out-of-state laboratories will be for the analysis of samples taken in-state and shipped to an out-of-state facility for analysis. The amendment does not contemplate reimbursement for laboratory tests taken at laboratories located outside of Texas. The amendment to §352.17 is proposed to implement §531.066 of the Government Code.

Section-by-Section Summary

The amendment to §352.17 adds new subsection (h) to allow a laboratory to be enrolled as an in-state Medicaid provider, regardless of where the service is performed, if the laboratory or its parent entity maintains laboratories in Texas; employs at least 1,000 people in Texas; and is qualified to provide services and is not prohibited from participating as a provider based on activities that constitute fraud, waste, or abuse.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. The proposed amended rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will not be an economic cost to persons required to comply with the rule. The rule will not affect a local economy or local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the proposed amendment as they will not be required to alter their business practices as a result of the amended rule.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The proposed amendment will ensure continuity of laboratory services and compliance with state law.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Laurie VanHoose, Acute Care Policy Director, Medicaid and CHIP, 4900 N. Lamar Blvd., Austin, Texas 78751; by fax to (512) 730-7472; or by e-mail to laurie.vanhoose@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.066, which authorizes HHSC to enroll laboratories located outside of Texas as in-state Medicaid providers under certain conditions.

The proposed amendment affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§352.17. Out-of-State Medicaid Provider Eligibility.

(a) This section applies only to an out-of-state Medicaid applicant or re-enrolling provider. An applicant or re-enrolling provider is considered out-of-state if:

(1) the physical address where services are or will be rendered is located outside the Texas state border and within the United States;

(2) the physical address where the services or products originate or will originate is located outside the Texas state border and within the United States when providing services, products, equipment, or supplies to a Medicaid recipient in the state of Texas; or

(3) the physical address where services are or will be rendered is located within the Texas state border, but:

(A) the applicant or re-enrolling provider maintains all patient records, billing records, or both, outside the Texas state border; and

(B) the applicant or re-enrolling provider is unable to produce the originals or exact copies of the patient records or billing records, or both, from the location within the Texas state border where services are rendered.

(b) An applicant or re-enrolling provider that is considered out-of-state under subsection (a) of this section is ineligible to participate in Medicaid unless HHSC or its designee approves the applicant or re-enrolling provider for enrollment on the basis of a determination that the applicant or re-enrolling provider has provided, is providing, or will provide services under one or more of the following criteria:

(1) The services are medically necessary emergency services provided to a recipient who is located outside the Texas state border, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(2) The services are medically necessary services provided to a recipient who is located outside the Texas state border, and in the expert opinion of the recipient's attending physician or other provider, the recipient's health would be or would have been endangered if the recipient were required to travel to Texas, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(3) The services are medically necessary services that are more readily available to a recipient in the state where the recipient is located, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee.

(4) The services are medically necessary to a recipient who is eligible on the basis of participation in an adoption assistance or foster care program administered by the Texas Department of Family and Protective Services under Title IV-E of the Social Security Act, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(5) The services are medically necessary and have been prior authorized by HHSC or its designee, and documented medical justification indicating the reasons the recipient must obtain medical care outside Texas is furnished to HHSC or its designee before providing the services and before payment, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(6) The services are medically necessary and it is the customary or general practice of recipients in a particular locality within Texas to obtain services from the out-of-state provider, if the provider is

located in the United States and within 50 miles driving distance from the Texas state border, or as otherwise demonstrated on a case-by-case basis.

(A) Enrollment under this paragraph may be time-limited for an appropriate period as determined by HHSC or its designee.

(B) An out-of-state provider does not meet the criterion in this paragraph merely on the basis of having established business relationships with one or more providers that participate in Medicaid.

(7) The services are medically necessary services to one or more dually eligible recipients (i.e., recipients who are enrolled in both Medicare and Medicaid) and the out-of-state provider may be considered for reimbursement of co-payments, deductibles, and co-insurance, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee, and the enrollment will be restricted to receiving reimbursement only for the Medicaid-covered portion of Medicare crossover claims.

(8) The services are provided by a pharmacy that is a distributor of a drug that is classified by the U.S. Food and Drug Administration (FDA) as a limited distribution drug.

(c) An out-of-state provider that applies for enrollment in Medicaid must submit documentation along with the enrollment application to demonstrate that the provider meets one or more of the criteria in subsection (b) of this section. The provider must submit any additional requested information to HHSC or its designee before enrollment may be approved.

(d) If HHSC or its designee determines that an out-of-state provider meets one or more of the criteria in subsection (b) of this section, the provider must meet all other applicable enrollment eligibility requirements, including those specified in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity) before enrollment may be approved.

(e) Other applicable requirements.

(1) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must follow all other applicable Medicaid participation requirements identified by HHSC or its designee for each service provided. Other applicable requirements that must be followed may include:

(A) service benefits and limitations;

(B) documentation procedures;

(C) obtaining prior authorization for the service whenever required; and

(D) claims filing deadlines as specified in §354.1003 of this title (relating to Time Limits for Submitted Claims).

(2) Certain out-of-state providers are not entitled to utilize the extended 365-day claim filing deadline provided in §354.1003(a)(5)(H) of this title that is otherwise available to out-of-state providers, and must comply with the same claims filing deadlines that apply to in-state providers under that section. Those out-of-state providers are:

(A) providers that are approved for enrollment under the criterion specified in subsection (b)(6) of this section, where the specific basis for approval is that the provider is located within 50 miles driving distance from the Texas state border; and

(B) providers that are approved for enrollment under the criterion specified in subsection (b)(7) of this section regarding dually eligible recipients.

(f) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must:

(1) comply with the terms of the Medicaid provider agreement;

(2) provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and

(3) comply with all state and federal laws and regulations relating to Medicaid.

(g) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas and within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(h) A laboratory may participate as an in-state provider under any program administered by a health and human services agency, including HHSC, that involves laboratory services, regardless of the location where any specific service is performed or where the laboratory's facilities are located if:

(1) the laboratory or an entity that is a parent, subsidiary, or other affiliate of the laboratory maintains laboratory operations in Texas;

(2) the laboratory and each entity that is a parent, subsidiary, or other affiliate of the laboratory, individually or collectively, employs at least 1,000 people working at a site located within the state of Texas; and

(3) the laboratory is otherwise qualified to provide the services under the program and is not prohibited from participating as a provider under any benefits programs administered by a health and human services agency, including HHSC, based on conduct that constitutes fraud, waste, or abuse.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302415

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER J. OUTPATIENT PHARMACY SERVICES

1 TAC §§353.903, 353.905, 353.907, 353.913

The Texas Health and Human Services Commission (HHSC) proposes to amend §§353.903, 353.905, 353.907, and 353.913, concerning outpatient pharmacy services in the Medicaid managed care program.

Background and Justification

The Health and Human Services Commission (HHSC) proposes rule amendments to comply with bills passed by the 83rd Legislature, Regular Session, 2013, that impact the requirements for

Medicaid and Children's Health Insurance Program (CHIP) managed care organizations (MCOs) related to outpatient pharmacy benefits.

Senate Bill (S.B.) 1106 requires Medicaid and CHIP MCOs to be transparent about disclosing to pharmacies how they set their maximum allowable costs (MAC) for drugs. This includes allowing pharmacies to challenge a MAC price, notifying pharmacies of changes to MAC prices weekly, and providing a process for a pharmacy to readily access its MAC prices. The proposed rules are amended to add a definition for MAC and to require the MCOs to comply with §533.005(a)(23)(K) and (a-2) of the Government Code, as amended by S.B. 1106, with respect to MAC lists. HHSC proposes to amend §353.903, Definitions, and §353.905, Managed Care Organization Requirements.

S.B. 644 requires Medicaid and CHIP MCOs to accept standard prior authorization (PA) forms developed by the Texas Department of Insurance (TDI) when submitted by doctors for pharmacy services. HHSC proposes to amend §353.907, Prior Authorization Requirements, to require MCOs to comply with Chapter 1369, Subchapter F of the Insurance Code with respect to a standard PA form for covered outpatient drugs.

Additionally, HHSC proposes to amend §353.913, Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services, to fix a clerical error. Sections 353.903, Definitions, 353.905, Managed Care Organization Requirements, and 353.907, Prior Authorization Requirements are also amended to make other clarifications, including: clarifying the definition of covered outpatient drugs, updating references to Chapter 354, Subchapter F relating to fee-for-service pharmacy services, clarifying that the MCO's subcontractors are also required to comply with Subchapter J of Chapter 353, and technical corrections.

Section-by-Section Summary

The proposed amendment to §353.903 clarifies the current definition of covered outpatient drug to encompass physician-administered outpatient drugs. A new paragraph (5) is added to define maximum allowable cost (MAC), and the remaining paragraphs are renumbered accordingly.

The proposed amendment to §353.905 adds new subsection (h) to require MCOs to comply with §533.005(a)(23)(K) and (a-2) of the Government Code, related to MAC list transparency. New subsection (j) is added to clarify that the MCO's subcontractors are required to comply with this subchapter. Technical corrections are also made.

The proposed amendment to §353.907 adds new subsection (i) to require the MCOs to comply with Chapter 1369, Subchapter F of the Insurance Code by accepting the TDI standard PA form for covered outpatient drugs. A technical correction is also made.

The proposed amendment to §353.913 makes a technical correction.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there may be a fiscal impact to state government. The effect on state government for the first five years the amendments are in effect is an anticipated cost due to S.B. 1106 and S.B. 644. However, HHSC has no data to calculate the cost for S.B. 1106 because the agency lacks data on maximum allowable costs for each MCO. Regarding S.B. 644,

there are anticipated administrative costs to the MCOs to adopt a standard prior authorization form for prescription drugs. However, HHSC lacks sufficient data to calculate the impacts of these costs on capitation rates as it will depend on the nature and complexity of the forms developed by TDI.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the amendments during the first five years the rules will be in effect. The amendment will not affect local employment. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse impact on small businesses or micro-businesses to comply with the proposed amendments because providers are expected to benefit from the changes required by the proposed rules.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules because the proposed amended rules will allow pharmacy providers to provide better services to clients since they will have greater access to maximum allowable costs lists and a standardized prior authorization form.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private, real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst in the Medicaid/CHIP Vendor Drug Program, 4900 N. Lamar, Austin, Texas 78751; by fax to (512) 730-7483; or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §533.005, which requires pharmacies to disclose how they set their maximum allowable costs (MAC) for drugs; and Texas Insurance Code §1369.252(d), which requires Medicaid and CHIP MCOs to use a standardized form developed by TDI.

The proposed amendments affect Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.903. Definitions.

The following words and terms, when used in this subchapter, have the following meaning unless the context clearly indicates otherwise.

(1) Clinical edit--A process for verifying that a member's medical condition matches the clinical criteria for a prescribed drug.

(2) Clinical edit prior authorization (clinical edit PA)--A prior authorization that is granted by a health care managed care organization (health care MCO) prior to dispensing a covered outpatient drug with a clinical edit.

(3) Covered outpatient drug--A drug or biological product included on the formulary and provided [dispensed by a pharmacy] in an outpatient setting.

(4) Formulary--The list of covered outpatient drugs for the Texas Medicaid program.

(5) Maximum allowable cost--A maximum reimbursement limit set by a health care MCO for selected multi-source drugs.

(6) [(5)] Network provider--A pharmacy provider who has entered into a contract with the health care MCO to provide outpatient drug benefits to Medicaid enrollees.

(7) [(6)] Non-preferred drug--A covered outpatient drug on the preferred drug list (PDL) that has been designated as non-preferred.

(8) [(7)] Pharmacy benefits manager (PBM)--An entity that administers the Medicaid outpatient drug benefit on behalf of a health care MCO.

(9) [(8)] Preferred drug--A covered outpatient drug on the PDL that has been designated as preferred because it has been evaluated to be safe, clinically effective, and cost-effective compared to other drugs in the same therapeutic drug class on the market.

(10) [(9)] Preferred drug list (PDL)--The list of covered outpatient drugs reviewed by the Pharmaceutical and Therapeutics (P & T) Committee. Reviewed drugs are recommended by the P & T Committee as either preferred or non-preferred and HHSC establishes the final designation.

(11) [(10)] Preferred drug list prior authorization (PDL PA)--A prior authorization that is granted by a health care MCO prior to dispensing a non-preferred drug.

(12) [(11)] Prior authorization (PA)--A positive determination made by a health care MCO that a prescription for a covered outpatient drug meets the criteria to be reimbursed by the health care MCO.

§353.905. Managed Care Organization Requirements.

(a) A health care managed care organization (health care MCO) must adopt and exclusively use the Health and Human Services Commission's (HHSC's) Medicaid formulary and preferred drug list.

(b) A health care MCO is not authorized to negotiate rebates for covered outpatient drugs with drug manufacturers, or to receive confidential drug pricing regarding covered outpatient drugs from drug manufacturers.

(c) A health care MCO cannot pay claims submitted by a pharmacy provider who is under sanction or exclusion from the Medicaid or CHIP Programs.

(d) Except as provided in subsection [subpart] (e) of this section, a health care MCO must enter into a network provider agreement

with any pharmacy provider that meets the health care MCO's credentialing requirements, and agrees to the health care MCO's financial terms and other reasonable administrative and professional terms.

(e) A health care MCO can enter into selective pharmacy provider agreements for specialty drugs, as defined in §354.1853 of this title (relating to Specialty Drugs), subject to the following limitations:

(1) A health care MCO is prohibited from entering into an exclusive contract for specialty drugs with a pharmacy owned in full or part by a pharmacy benefits manager contracted with the health care MCO.

(2) The selective contracting agreement cannot require the pharmacy provider to contract exclusively with the health care MCO.

(3) A health care MCO cannot require a member to obtain a specialty drug from a mail-order pharmacy.

(f) A health care MCO must allow pharmacy providers to fill prescriptions for covered outpatient drugs ordered by any licensed prescriber regardless of the prescriber's network participation.

(g) A health care MCO must pay claims in accordance with Texas Insurance Code §843.339, relating to prescription drug claims payment requirements.

(h) A health care MCO must comply with §533.005(a)(23)(K) and (a-2) of the Government Code with respect to maximum allowable cost (MAC) lists.

(i) ~~[(h)]~~ A health care ~~[An]~~ MCO must comply with the rules in Chapter 354, Subchapter F (relating to Pharmacy Services) ~~[and Subchapter W (relating to Pharmacy Limitations)]~~ of this title with the exception of:

~~[(1) Section 354.1865 (relating to Number-of-prescriptions Limit);]~~

(1) ~~[(2)]~~ Section 354.1867 (relating to Refills);

(2) ~~[(3)]~~ Section 354.1873 (relating to Freedom of Choice);

(3) Section 354.1877 (relating to Quantity Limitations);

and

(4) Division 6 (relating to Pharmacy Claims);~~]; and]~~

~~[(5) Section 354.3047 (relating to Quantity Limitations).]~~

(j) A health care MCO must require its subcontractors to comply with the requirements of this subchapter when providing outpatient pharmacy benefits through Medicaid managed care.

§353.907. Prior Authorization Requirements.

(a) A health care managed care organization (health care MCO) may not impose a preferred drug list prior authorization (PDL PA) on a covered outpatient drug before the drug has been considered at a meeting of the Health and Human Services Commission's (HHSC's) Pharmaceutical and Therapeutics Committee.

(b) A health care MCO may not impose a PDL PA on a covered outpatient drug that was prescribed before HHSC's designation of the drug as non-preferred, unless the member has exhausted all of the prescription, including any authorized refills.

(c) A health care MCO must allow a provider to submit a request for prior authorization of a covered outpatient drug by telephone, fax, or electronic communications through the Internet.

(d) A health care MCO must respond to a request for prior authorization by telephone, fax, or electronic communications through

the Internet no later than 24 hours after receiving the request. If the health care MCO cannot respond to the prior authorization request within this time, then the health care MCO must allow a pharmacy to dispense a 72-hour supply of the prescribed drug.

(e) A health care MCO cannot require a PDL PA for a preferred drug.

(f) A health care MCO must require a PDL PA for a non-preferred drug.

(g) If a member's medical condition does not match the health care MCO's clinical criteria for dispensing a covered outpatient drug, the health care MCO may require a ~~[clinical edit prior authorization~~ ~~[(clinical edit PA)]]~~ for a preferred or non-preferred drug.

(h) HHSC will post on its website clinical edit PAs that are used in HHSC's fee-for-service Vendor Drug Program. A health care MCO must implement all clinical edit PAs that HHSC has designated as "mandatory" for the Medicaid managed care programs.

(i) A health care MCO must accept a standard prior authorization form for a covered outpatient drug in accordance with Texas Insurance Code Chapter 1369, Subchapter F.

§353.913. Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services.

(a) Network adequacy.

(1) The Health and Human Services Commission (HHSC) is the state agency responsible for overseeing and monitoring the Medicaid managed care program. A health care managed care organization (health care MCO) participating in the Medicaid managed care program must offer a network of pharmacy providers that is sufficient to meet the needs of the health care MCO's members. HHSC will monitor health care MCO members' access to an adequate provider network through reports from the health care MCOs and complaints received from providers and members. The reporting requirements are discussed in subsection (c) of this section.

(2) A health care MCO may not refuse to reimburse an out-of-network pharmacy provider for emergency covered outpatient pharmacy services.

(b) Reasonable reimbursement methodology. If a health care MCO and an out-of-network pharmacy provider cannot agree on a reimbursement amount, then the health care MCO must reimburse the provider at the usual and customary rate that prevails in the service area, unless payment is limited by state or federal law.

(c) Reporting requirements. A health care MCO must submit a quarterly report to HHSC regarding out-of-network pharmacy utilization, as described in §353.4 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Providers). For purposes of such reporting, the health care MCO will include out-of-network pharmacy utilization under the "other services" category.

(d) Utilization.

(1) Upon review of a report described in subsection (c) of this section, HHSC may determine that a health care MCO exceeded maximum out-of-network usage standards set by HHSC for out-of-network access to covered outpatient pharmacy services during the reporting period.

(2) Out-of-network usage standards. No more than 20 percent of total dollars billed to a health care MCO for covered outpatient pharmacy services may be billed by out-of-network providers.

(e) Provider complaints.

(1) HHSC will accept provider complaints regarding reimbursement for or overuse of out-of-network pharmacy providers and will conduct investigations into any such complaints.

(2) When a pharmacy provider files a complaint regarding out-of-network payment, HHSC will require the health care MCO to submit data to support its position on the adequacy of the payment to the provider. The data will include at a minimum a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a pharmacy provider complaint, HHSC will notify the pharmacy provider of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining pharmacy provider will include:

(A) a description of the corrective actions, if any, required of the health care MCO in order to resolve the complaint; and

(B) if applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network pharmacy provider.

(4) If HHSC determines through investigation that a health care MCO did not reimburse an out-of-network pharmacy provider based on a reasonable reimbursement methodology as described in subsection (b) of this section, HHSC will initiate a corrective action plan. Refer to subsection (f) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network pharmacy provider, the health care MCO must pay the additional reimbursement owed to the out-of-network pharmacy provider within 90 days from the date the complaint was received by HHSC, or 18 days from the date the claim, or information required that makes the claim clean, is received by the health care MCO, whichever comes first.

(6) If the health care MCO does not pay the entire amount of the additional reimbursement by the due date described in paragraph (5) of this subsection, HHSC may require the health care MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the due date described in paragraph (5) of this subsection until the date the entire amount of the additional reimbursement is paid.

(7) HHSC will pursue any appropriate remedy authorized in the contract between the health care MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (f) of this section.

(f) Corrective action plan.

(1) A corrective action plan is required by HHSC in the following situations:

(A) The health care MCO exceeds a maximum standard established by HHSC for out-of-network access to covered outpatient pharmacy services described in subsection (d) of this section; or

(B) The health care MCO does not reimburse an out-of-network pharmacy provider based on a reasonable reimbursement methodology as described in subsection (b) of this section.

(2) A corrective action plan imposed by HHSC will require one of the following:

(A) Reimbursements by the health care MCO to out-of-network pharmacy providers at rates that equal the allowable rates for the health care services as determined under Human Resources Code §32.028 and §32.0281 for all covered outpatient pharmacy services provided during the period:

(i) the health care MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the health care MCO is not reimbursing out-of-network pharmacy providers based on a reasonable reimbursement methodology, as described in subsection (c) of this section;

(B) Initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the health care MCO until HHSC determines that the provider network under the health care MCO can adequately meet the needs of its members;

(C) Education of the health care MCO's members regarding the proper use of the health care MCO's pharmacy provider network; or

(D) Any other actions HHSC determines are necessary to ensure that the health care MCO [Mao's] members have access to appropriate covered outpatient pharmacy services and that pharmacy providers are properly reimbursed by the health care MCO for providing such services to those recipients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302417

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §§354.1601, 354.1602, 354.1611, 354.1613, 354.1621, 354.1622, 354.1632, 354.1633, and 354.1634, concerning the Texas Healthcare Transformation and Quality Improvement Program, and new §354.1635, concerning RHP Plan Modification.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare and Medicaid Services (CMS) for the Texas Healthcare Transformation and Quality Improvement Program, a Section 1115 Waiver. One facet of the 1115 Waiver is the Delivery System Reform Incentive Payment (DSRIP) program in which providers gather together in Regional Healthcare Partnerships (RHPs) to propose and implement projects that further HHSC's goal of positive transformation for the state's healthcare system. Providers are given an incentive payment based upon the successful completion of metrics in each DSRIP project.

Program rules describing the entire DSRIP program became effective in October 2012. These rules describe the formation, makeup, and responsibilities of RHPs, the qualifications and responsibilities of performers and intergovernmental transfer (IGT)

entities, RHP planning requirements, and the requirements for DSRIP projects themselves. The rules mirror the requirements of the Program Funding and Mechanics (PFM) Protocol as it stood in October 2012. The PFM Protocol is a document written jointly by HHSC and CMS that represents agreements between the two concerning the operation of the DSRIP program. RHPs submitted full RHP plans to HHSC for review by December 31, 2012, and HHSC subsequently sent the plans to CMS for its review no later than April 15, 2013.

HHSC and CMS continued to refine the DSRIP program given their experience with the program. Additionally, changes were necessary to enable timely initial approval of most DSRIP projects while allowing CMS and HHSC additional time to review projects for full four-year approval. As such, HHSC and CMS recently negotiated additional requirements for the DSRIP program and included such requirements in the PFM Protocol. These rules describe the additional requirements of the DSRIP program and clarifications of existing requirements.

Amendments to the waiver program rules include: additional requirements on DSRIP performers and RHPs, a process for RHP plan review after an RHP is informed of CMS approval and concerns, the addition of a mid-point assessment on all DSRIP projects, a new process to determine Category 3 outcome improvement targets, and a new section detailing the process for RHP plan modifications and potential redistribution of RHP allocations.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §354.1601 recognizes that rules related to waiver reimbursement are not limited to hospitals and physician services.

Proposed amendments to §354.1602 clarify the definitions of the following terms: domain, IGT entity, outcome improvement target, Program Funding and Mechanics Protocol, and RHP Planning Protocol.

Proposed amendment to §354.1611(d) clarifies that a physician group practice affiliated with an academic health science center, major cancer hospital or children's hospital may participate in a region in which it is not physically located if that region provides it a DSRIP allocation.

Proposed amendment to §354.1613(b)(5) requires a performer to prepare and submit semi-annual progress reports in addition to other reports as may be required by HHSC and CMS.

Proposed amendments to §354.1621 include the clarification that the description of each DSRIP project in an RHP plan must address core components of the project where required. Additionally, the proposed amendment adds the requirement that the description of each DSRIP project in an RHP plan must provide a quantifiable estimate of the impact the DSRIP project will have on all patients, including Medicaid and low-income uninsured populations.

Proposed amendments to §354.1622(c)(2) and (3) change "modification of" to "a change in" because the term modification has a certain meaning in the DSRIP program given proposed new §354.1635, relating to RHP Plan Modification.

Proposed new §354.1622(e) describes the process for an RHP or DSRIP performer to supplement its associated RHP plan to address CMS concerns.

Proposed new §354.1622(f) allows for HHSC to require clarifications to an RHP plan at any time if such a clarification is necessary to make a payment.

Proposed new §354.1622(g) explains that a monitoring entity will conduct a mid-point assessment of all RHP plans and describes the areas that will be assessed. Additionally, this new subsection explains that HHSC or CMS may require changes to an RHP plan as a result of the mid-point assessment and that certain DSRIP payments may be withheld until such changes are submitted.

Proposed amendment to §354.1632 requires each RHP to submit a plan for ongoing learning collaboratives, with exceptions.

Proposed amendments to §354.1633 clarify that a Category 3 outcome must be appropriate for the patient population in the related DSRIP project and updates the method for selecting an outcome improvement target to mirror agreements between HHSC and CMS.

Proposed amendments to §354.1634 clarify existing rules and require that a performer may not change the IGT entity affiliated with the performer for purposes of a payment once the performer reports that the performance of the metric associated with that payment is complete.

Proposed new §354.1635 describes the RHP plan modification process including the ability of HHSC to utilize unclaimed RHP allocations for the second demonstration year, the ability of RHPs to utilize unclaimed RHP allocations for the third, fourth and fifth demonstration years for three-year DSRIP projects, and the method of redistribution if such RHP allocations remain unutilized.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that, for each year of the first five years the proposed rules will be in effect, there will be a fiscal impact to state and local governments.

The effect on state government for each of the first five years the proposed rules will be in effect cannot be determined but is anticipated to be positive as state funds are matched with a greater amount of federal funds.

The effect on local governments for each of the first five years the proposed rules will be in effect cannot be determined but is anticipated to be positive as the local funds are matched with a greater amount of federal funds.

PUBLIC BENEFITS AND COSTS

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the rules will be in effect, the public benefit expected as a result of adopting the proposed rules is the continued operation of the DSRIP program and assurance of continued federal financial participation in Medicaid supplemental payments under the waiver.

Ms. Rymal anticipates that, for each year of the first five years the rules will be in effect, there will not be an economic cost to persons required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

HHSC has determined that the rules will not affect a local economy or local employment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the rules would have no adverse economic effect on small businesses or micro-businesses because any small businesses participating in the 1115 Waiver will gain additional funding.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Charles Greenberg, Assistant General Counsel, Office of General Counsel, Health and Human Services Commission, Mail Code-1070, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 424-6586; or by e-mail to charles.greenberg@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

DIVISION 1. GENERAL

1 TAC §354.1601, §354.1602

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The amendments implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1601. *Introduction.*

(a) The purpose of this subchapter is to govern implementation of the demonstration waiver under §1115 of the Social Security Act, entitled "Texas Healthcare Transformation and Quality Improvement Program" (the waiver).

(b) Subject to all agreements with the Centers for Medicare and Medicaid Services, this subchapter describes the criteria for participation in a Regional Healthcare Partnership and the allocation and use of waiver funds.

(c) Rules related to reimbursement [for hospitals and physician services] under the waiver are codified at Chapter 355, Subchapter J, Division 11 of this title (relating to Texas Healthcare Transformation and Quality Improvement Program Reimbursement).

§354.1602. *Definitions.*

The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) **Administrative Cost Claiming Protocol**--A document that explains the process the State will use to determine administrative costs incurred under the waiver.

(2) **Anchor**--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(3) **Centers for Medicare and Medicaid Services (CMS)**--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(4) **Delivery System Reform Incentive Payment (DSRIP)**--An incentive payment related to the development or implementation of a program of activity that supports an RHP's efforts to enhance access to health care, the quality of care, and the health of patients and families the RHP serves. A DSRIP payment is not considered patient-care revenue and is not offset against Disproportionate Share Hospital expenditures or other expenditures related to the cost of patient care.

(5) **Demonstration year**--A 12-month period beginning October 1 and ending September 30.

(6) **Domain**--A group of similar measures in DSRIP Category 4.

(7) **DSRIP pool**--Funding available to RHP participants under the waiver to compensate them for the value of DSRIP projects.

(8) **DSRIP project**--An activity selected from the RHP Planning Protocol for implementation in an RHP plan.

(9) **Governmental entity**--A state agency or a political subdivision of the state, such as a city, county, hospital district, hospital authority, or state entity.

(10) **HHSC**--The Texas Health and Human Services Commission or its designee.

(11) **Intergovernmental transfer (IGT)**--A transfer of public funds from a governmental entity to HHSC.

(12) **IGT entity**--A governmental entity that provides an IGT to fund the non-federal share of a waiver payment [the waiver].

(13) **Medicaid provider**--An entity approved by HHSC to provide Medicaid services.

(14) **Metric**--A quantitative or qualitative indicator of progress from a baseline toward achieving a milestone.

(15) **Milestone**--An objective of DSRIP project performance comprised of one or more metrics.

(16) **Outcome improvement target**--A measure that assesses the impact of a DSRIP project on patients, patient experience, or the efficiency of care delivery [the results of care experienced by patients; including patients' clinical events, patients' recovery and health status; patients' experiences in the health system; and efficiency/cost].

(17) **Participant**--An entity participating in an RHP. A participant may be an IGT entity, a performer, or another stakeholder.

(18) **Performer**--A Medicaid provider that implements one or more DSRIP projects.

(19) **Physician group practice**--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(20) Program Funding and Mechanics Protocol (PFM Protocol)--A document containing the DSRIP [waiver] program guidelines as agreed upon by HHSC and CMS.

(21) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(22) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(23) RHP allocation--An amount of DSRIP funds allocated to a specific RHP during the DSRIP planning process.

(24) RHP plan--A multi-year plan submitted to HHSC and CMS, as further described in §354.1621 of this subchapter (relating to RHP Plan).

(25) RHP Planning Protocol--A master list of potential DSRIP projects with applicable[~~as well as~~] milestones and metrics [~~applicable to these projects~~].

(26) Uncompensated Care (UC) hospital--A hospital eligible to be a performer that chooses to receive only UC payments.

(27) Uncompensated Care (UC) pool--Funding available to certain RHP participants, as well as dental and ambulance providers, under the waiver to defray uncompensated care costs.

(28) Waiver--The Texas Healthcare Transformation and Quality Improvement Program demonstration waiver under §1115 of the Social Security Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302420

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



DIVISION 2. REGIONAL HEALTHCARE PARTNERSHIPS

1 TAC §354.1611, §354.1613

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The amendments implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1611. Organization.

(a) Each Regional Healthcare Partnership (RHP) has geographic boundaries as prescribed by HHSC.

(b) An RHP is composed of one anchor and other participants, which may include IGT entities, performers, and other regional stakeholders. A single entity may act in multiple roles.

(c) An IGT entity may participate in more than one RHP contingent upon HHSC approval.

(d) A performer may only participate in the RHP where it is physically located. However, a physician group practice affiliated with an academic health science center, major cancer hospital, or children's hospital may participate in another region if it receives a DSRIP [an] allocation from that region.

(e) Only providers participating in an RHP are eligible to receive a UC payment, although exceptions may be approved by CMS on a case by case basis.

(f) Each RHP is categorized into a tier as follows:

(1) Tier 1 consists of any RHP that contains at least 15% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(2) Tier 2 consists of any RHP that contains at least 7% and less than 15% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(3) Tier 3 consists of any RHP that contains at least 3% and less than 7% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(4) Tier 4 consists of any RHP that:

(A) contains less than 3% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas;

(B) does not have a public hospital; or

(C) has one or more public hospitals that, when combined, provide less than 1% of the region's uncompensated care.

§354.1613. Participants.

(a) IGT entities. An IGT entity:

(1) determines the allocation of its intergovernmental transfer (IGT) funding consistent with state and federal requirements;

(2) participates in Regional Healthcare Partnership (RHP) planning;

(3) if the IGT entity is itself acting as a performer, selects DSRIP projects;

(4) if the IGT entity is not acting as a performer, cooperates with a performer to select DSRIP projects;

(5) provides the non-federal share of uncompensated care (UC) and delivery system reform incentive payment (DSRIP) pool payments for the entities with which it collaborates; and

(6) may review DSRIP project data submitted by associated performers.

(b) Performers. A performer:

- (1) develops and implements a DSRIP project;
- (2) receives DSRIP;
- (3) coordinates submission of DSRIP project information to the anchor for purposes of RHP plan development;
- (4) prepares and submits DSRIP project metric data on a semi-annual basis;
- (5) prepares and submits semi-annual progress reports and other reports as required by HHSC and the Centers for Medicare and Medicaid Services; and
- (6) participates in RHP planning.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302421

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

1 TAC §354.1621, §354.1622

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The amendments implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1621. RHP Plan.

(a) A performer may receive DSRIP only if HHSC and the Centers for Medicare and Medicaid Services have approved the RHP plan with which the performer is associated.

(b) An RHP plan must:

- (1) meet the requirements listed in the Program Funding and Mechanics Protocol (PFM Protocol) and the RHP Planning Protocol;
- (2) describe the Regional Healthcare Partnership's (RHP's) health care needs, referencing sources used;
- (3) include a list of IGT entities, performers, and UC hospitals;
- (4) include a certification that all the information contained within the RHP plan is true and accurate;
- (5) describe the processes used to engage stakeholders including the public meetings held, public posting of the RHP plan, and the process for submitting public comment on the RHP plan;

(6) include a reasonable estimate of the available non-federal funds in the region, by demonstration year, to support the UC and DSRIP pools;

(7) include the total amount of estimated UC and DSRIP funding to be used by demonstration year;

(8) include the minimum number of DSRIP projects as described in §354.1632 of this subchapter (relating to DSRIP Requirements for Regional Healthcare Partnerships);

(9) list all DSRIP projects submitted to the RHP for consideration, including those DSRIP projects proposed by RHP participants that were not selected for inclusion in the RHP plan;

(10) include a narrative explaining how all of the DSRIP projects selected by the RHP will:

(A) address the community needs outlined in the RHP plan; and

(B) demonstrate health care delivery transformation and improvement in the quality of care provided in that RHP; and

(11) include a description of each DSRIP project that must:

(A) include the milestones and metrics associated with the project;

(B) for each milestone, include the estimated DSRIP funding;

(C) contain a reasonable estimate of the IGT provided by the IGT entity in connection with the DSRIP project as well as the identity of the IGT entity;

(D) explain how the project addresses the regional health care needs stated within the RHP plan;

(E) justify the amount of DSRIP funding estimated for the project; ~~and~~

(F) explain how the DSRIP funding will not duplicate the funding for federal activities or initiatives funded by the U.S. Department of Health and Human Services;[-]

(G) address each core component required for the project as identified in the RHP Planning Protocol; and

(H) provide a reasonable, quantifiable estimate of the impact the DSRIP project will have on all patients, including Medicaid and low-income uninsured populations.

§354.1622. RHP Plan Assessment.

(a) If HHSC assesses that the RHP plan meets the requirements in §354.1621(b) of this division (relating to RHP Plan), HHSC will submit the RHP plan to the Centers for Medicare and Medicaid Services (CMS) for review.

(b) Upon completion of HHSC's assessment, HHSC notifies the anchor that HHSC:

- (1) has submitted the RHP plan to CMS for review;
- (2) requires additional information to complete its assessment;
- (3) requires modification of the RHP plan, including the specific deficiencies in the RHP plan that HHSC has identified; or
- (4) requires modification of a DSRIP project, including the specific deficiencies in the DSRIP project that HHSC has identified. If a particular DSRIP project needs modification, the funding IGT entity and performer associated with that DSRIP project will be notified in addition to the anchor.

(c) The anchor must respond to a notification as described in subsection (b) of this section in accordance with the directions in the notification, to ensure timely submission of the RHP plan to CMS. Failure to respond in a timely manner may result in denial of the RHP plan.

(1) If HHSC requires additional information to complete its assessment, the anchor must provide the additional information within the time frame specified in the notice.

(2) If HHSC requires a change in [modification of] the RHP plan, the anchor:

(A) must submit a corrected RHP plan that addresses the specific deficiencies within the time frame specified in the notice; or

(B) request a review of the HHSC finding as described in subsection (d) of this section within the time frame specified in the notice.

(3) If HHSC requires a change in [modification of] a DSRIP project, the anchor must:

(A) work with the associated IGT entity and performer and submit a corrected DSRIP project that addresses the specific deficiencies within the time frame specified in the notice;

(B) request a review of the HHSC finding as described in subsection (d) of this section within the time frame specified in the notice; or

(C) certify that the DSRIP project is withdrawn.

(d) If after responding to the notice as described in subsection (c) of this section an RHP plan or DSRIP project is not approved, the affected entities may request a review.

(1) If an RHP plan is not approved, the anchor may request a review by HHSC in accordance with paragraph (4) of this subsection.

(2) If a DSRIP project is not approved, the affected performer may direct the anchor to request a review in accordance with paragraph (4) of this subsection.

(3) The anchor must submit a request for review in writing to HHSC within 12 calendar days of the date HHSC sent the notification under this subsection.

(4) The review is:

(A) limited to the Regional Healthcare Partnership's (RHP's) allegations of factual or calculation errors;

(B) supported by documentation submitted by the RHP or used by HHSC in making its original determination; and

(C) not an adversarial hearing.

(5) HHSC will notify the RHP of the results of the review in a timely manner.

(e) CMS review of an RHP plan can result in multiple levels of approval. An anchor, or a performer through its anchor, may supplement or revise the RHP plan to address any issue identified by CMS that results in anything less than full approval. HHSC will review the supplemented or revised information before submitting it for CMS review.

(f) HHSC may, at any time, require clarifications to a DSRIP project if HHSC determines that the information provided in the RHP plan is so unclear as to prevent a payment.

(g) In the third demonstration year, a monitoring entity will conduct a mid-point assessment of all RHPs, consistent with the requirements of the PFM Protocol.

(1) The monitoring entity will review a DSRIP project for the following elements:

(A) Compliance with the approved RHP plan.

(B) Compliance with the required core components described in the RHP Planning Protocol, including continuous quality improvement activities.

(C) Ensuring that activities funded through DSRIP do not duplicate activities funded through other federal funds.

(D) The clarity of the improvement milestones for the fourth and fifth demonstration years and those milestones' connection to DSRIP project activities and patient impact.

(E) The benefit of the DSRIP project to the patients served by the project, including the Medicaid and uninsured populations.

(F) The opportunity for DSRIP project improvement.

(2) Based upon the recommendations of the monitor, HHSC or CMS may require changes to the RHP plan for the fourth and fifth demonstration years.

(3) Any change to an RHP plan resulting from this process will be reviewed by HHSC prior to submission to CMS.

(4) Future payments for a non-compliant DSRIP project may be withheld in whole or in part until the necessary changes identified by HHSC or CMS are addressed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302422

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



DIVISION 4. DSRIP

1 TAC §§354.1632 - 354.1635

STATUTORY AUTHORITY

The amendments and new rule are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The amendments and new rule implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1632. DSRIP Requirements for Regional Healthcare Partnerships.

(a) Each Regional Healthcare Partnership (RHP) must select a minimum number of projects from Categories 1 and 2.

(1) An RHP in Tier 1 must select a minimum of twenty DSRIP projects from Categories 1 and 2 combined. Of those twenty DSRIP projects, the RHP must select at least ten projects from Category 2.

(2) An RHP in Tier 2 must select a minimum of twelve DSRIP projects from Categories 1 and 2 combined. Of those twelve DSRIP projects, the RHP must select at least six projects from Category 2.

(3) An RHP in Tier 3 must select a minimum of eight DSRIP projects from Categories 1 and 2 combined. Of those eight DSRIP projects, the RHP must select at least four projects from Category 2.

(4) An RHP in Tier 4 must select a minimum of four DSRIP projects from Categories 1 and 2 combined. Of those four DSRIP projects, the RHP must select at least two projects from Category 2.

(b) Two or more performers in the same RHP may not select the same DSRIP project if the DSRIP projects affect the identical patient population.

(c) Each RHP must submit a plan for ongoing learning collaboratives as described by HHSC and CMS. An RHP in Tier 4 may submit a request to not conduct its own learning collaborative.

§354.1633. DSRIP Requirements for Performers.

(a) For any DSRIP project in Category 1 or 2, a performer must select at least one process milestone and at least one improvement milestone, as described in the Program Funding and Mechanics Protocol (PFM Protocol). This subsection does not apply to the first demonstration year.

(b) A performer that selects a DSRIP project from Category 1 or 2 must also perform in Category 3. A hospital that selects a DSRIP project from Category 1 or Category 2 must also perform in Category 4.

(c) A performer must have a Category 3 outcome related to each of its Category 1 and Category 2 projects.

(1) A Category 3 outcome must be appropriate for ~~reflect~~ the patient population in the related DSRIP project.

(2) A single Category 3 outcome may relate to more than one Category 1 or Category 2 DSRIP project.

(3) A performer must establish and begin reporting on outcome improvement targets no later than the fourth demonstration year. Unless otherwise approved by HHSC and CMS, a performer must utilize a methodology prescribed by HHSC and CMS for setting an outcome improvement target for the fourth and fifth demonstration years. The baseline for an outcome improvement target must be established no later than the third demonstration year.

~~[(A) A hospital-based performer may defer the establishment of outcome improvement targets until after a baseline is determined for that outcome improvement target. Such baseline must be determined no later than the third demonstration year.]~~

~~[(B) A non-hospital performer may defer identifying outcome improvement targets until a date defined by HHSC. Such performers must select outcome improvement targets and establish baselines for those targets no later than the third demonstration year.]~~

(4) A performer, HHSC, or the Centers for Medicare and Medicaid Services (CMS) may re-assess outcome improvement targets:

(A) A performer may seek to revise an outcome improvement target based on experience and circumstances showing that the target was not set appropriately.

(B) CMS may initiate a review to increase an outcome improvement target if a performer achieves a target two years earlier than projected.

(C) Based on HHSC's annual review of projects and progress by performers, HHSC or its external evaluator may identify outcome improvement targets that require additional refinements.

(d) To fulfill its obligations under Category 4, a hospital, unless exempted by HHSC in accordance with the PFM Protocol, must report on a set of required domains.

(1) Potentially Preventable Admissions (PPAs), Potentially Preventable Readmissions (PPRs), Potentially Preventable Complications (PPCs), Emergency Department (ED), and Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) are all required domains.

(2) Reporting for all required domains, except PPCs, must begin in the third demonstration year. Reporting for PPCs must begin in the fourth demonstration year.

(3) If a performer does not have a population for a Category 4 measure large enough to produce statistically valid data as described in the RHP Planning Protocol, that performer is not required to report the data for that particular Category 4 measure.

(4) A performer may choose to report on the additional optional domain described in the RHP Planning Protocol.

(e) A UC hospital must participate in an annual learning collaborative and report on a subset of Category 4 measures.

(1) The required subset of Category 4 measures consists of three domains: Potentially Preventable Admissions (PPAs), Potentially Preventable Readmissions (PPRs), and Potentially Preventable Complications (PPCs).

(A) If a hospital fails to report on the three domains by the last quarter of the applicable demonstration year, the hospital forfeits UC payments in that quarter.

(B) A hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures. The hospital will receive the fourth-quarter UC payment only if all outstanding required Category 4 measures are reported within that six-month extension.

(2) A hospital under this subsection is not eligible to receive DSRIP for Category 4 reporting.

§354.1634. Waiver Pool Allocation and Valuation.

(a) Purpose. In an effort to provide certainty to waiver participants, HHSC will provide performer specific allocations. This process requires that certain individual entities receive an allocation based upon a Regional Healthcare Partnership (RHP) specific allocation.

(b) RHP allocation. All available DSRIP funds are allocated among the RHPs for each demonstration year. The share of the DSRIP pool allocated to an RHP will be calculated using the formula: $RHP \text{ Share of DSRIP Pool} = (200\%FPL + \%MedicaidAcute + 2011UPL)/3$, where:

(1) "200%FPL" is the region's share of the state's population with income below 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas;

(2) "%MedicaidAcute" is the region's share of all Texas Medicaid acute care payments in state fiscal year (SFY) 2011. Texas Medicaid acute care payments consist of the sum of Medicaid fee-for-service, Medicaid managed care, Vendor Drug Program, and Primary Care Case Management payments; and

(3) "2011UPL" is the region's share of the state's Medicaid supplemental payments through the former Upper Payment Limit program made to providers in the RHP for SFY 2011.

(c) DSRIP allocation among performers for the first demonstration year. Anchors and performers may receive a DSRIP for the first demonstration year after review and approval of the RHP plan by HHSC.

(1) An anchor is allocated 20% of the RHP allocation for the first demonstration year. An anchor may also receive a portion of the allocation in paragraph (2) of this subsection if it independently qualifies under that paragraph.

(2) The amount of the RHP allocation for the first demonstration year not allocated to the anchor as described in paragraph (1) of this subsection is allocated to performers as follows:

(A) First, divide the value of all of a performer's DSRIP projects, as submitted by HHSC for CMS approval, by the total value of all DSRIP projects in an RHP.

(B) Second, multiply the result in subparagraph (A) of this paragraph by 80% of the RHP allocation for the first demonstration year for that RHP. The result is the first demonstration year DSRIP to the performer.

(3) In the event that the RHP plan or a DSRIP project is not approved by the Centers for Medicare and Medicaid Services or an RHP deletes a DSRIP project without a replacement, HHSC may recoup the DSRIP for the first demonstration year.

(d) ~~Three-pass~~ [Two-pass] process for allocating DSRIP. The DSRIP pool is allocated to performers for the second through fifth demonstration years through a three-stage [~~two-stage~~] process.

(1) The first stage (Pass One) sets an initial allocation to each potential performer, described further in subsection (e) of this section.

(2) Any unused DSRIP funds allocated in Pass One remain in the RHP for the second stage (Pass Two). An RHP may begin Pass Two if:

(A) the RHP funds the minimum number of Category 1 and Category 2 projects in accordance with §354.1632 of this subchapter (relating to DSRIP Requirements for Regional Healthcare Partnerships);

(B) each performer meets the allocation requirements among the four DSRIP categories as described in subsection (h) of this section;

(C) the minimum percentage of the Pass One allocation to non-profit and other private hospitals is met as follows:

(i) A Tier 1 RHP must fund 30% of the Pass One allocation to non-profit and other private hospitals.

(ii) A Tier 2 RHP must fund 30% of the Pass One allocation to non-profit and other private hospitals.

(iii) A Tier 3 RHP must fund 15% of the Pass One allocation to non-profit and other private hospitals.

(iv) A Tier 4 RHP must fund 5% of the Pass One allocation to non-profit and other private hospitals; and

(D) the minimum number of safety net hospitals in an RHP perform DSRIP projects. If there are fewer safety net hospitals in an RHP than are required to perform as follows, then all safety net hospitals in that RHP must perform DSRIP projects.

(i) At least five safety net hospitals in a Tier 1 RHP must perform DSRIP projects.

(ii) At least four safety net hospitals in a Tier 2 RHP must perform DSRIP projects.

(iii) At least two safety net hospitals in a Tier 3 RHP must perform DSRIP projects.

(iv) At least one safety net hospital in a Tier 4 RHP must perform DSRIP projects.

(3) For purposes of this subsection, a safety net hospital is any hospital that, as described in subsection (e) of this section:

(A) participated in the Disproportionate Share Hospital (DSH) program and:

(i) received at least 15% of the RHP's Medicaid acute care payments in SFY 2011 for all hospitals that receive a Pass One allocation; or

(ii) has a trended 2012 hospital-specific limit (HSL) that represents at least 15% of the RHP's total HSL; or

(B) has a Pass One allocation for demonstration years two through five of greater than \$60 million.

(4) Any unused funds allocated in Pass Two remain in the RHP for the third stage (Pass Three), described further in subsection (g) of this section.

(e) Pass One DSRIP allocation among performers. Entities within an RHP may be allocated an amount from the RHP allocation described in subsection (b) of this section.

(1) The RHP allocation is divided among certain classes of providers within the RHP as follows:

(A) hospitals are allocated 75%;

(B) community mental health centers are allocated 10%;

(C) academic health science centers are allocated 10%; and

(D) local health departments are allocated 5%.

(2) A hospital may receive a Pass One allocation only if the hospital participated in FFY 2012 Disproportionate Share Hospital program or the former Upper Payment Limit program in Federal Fiscal Year (FFY) 2011.

(3) The share of the RHP allocation that is allocated to hospitals is further divided among the hospitals according to the following formula: Hospital Share of RHP Allocation = (.25 x 2011UPL) + (.25 x MedicaidAcute) + (.50 x HSLCharity), where:

(A) "HSLCharity" is the hospital's share of the total hospital specific limit (HSL) for all hospitals in the RHP that receive a Pass One allocation. If a hospital eligible for a Pass One allocation does not have a FFY 2012 HSL, "HSLCharity" is measured by that hospital's charity care costs as reported in the 2010 Annual Hospital Survey trended to 2012 by a 4% total trend over the two-year period;

(B) "MedicaidAcute" is the hospital's share of all Medicaid acute care payments in SFY 2011 to hospitals in the RHP that receive a Pass One allocation. Texas Medicaid acute care payments con-

sist of the sum of Medicaid fee-for-service, Medicaid managed care, and Primary Care Case Management payments; and

(C) "2011UPL" is the hospital's share of the Medicaid supplemental payments through the former Upper Payment Limit program made to hospitals that received a Pass One allocation in the RHP for SFY 2011.

(4) Option for collaboration. Certain entities may combine their Pass One allocation to create one or more DSRIP projects that further the goal of regional transformation.

(A) A hospital in an RHP may combine its Pass One allocation with other hospitals in the same RHP if all of the entities have a Pass One allocation at or below \$2 million for the second demonstration year.

(B) An entity in a Tier 3 or 4 RHP as described by §354.1611(f) of this subchapter (relating to Organization) may combine its Pass One allocation with other entities in the same RHP.

(C) All entities involved in such collaboration must state in the RHP plan that they are collaborating freely.

(D) Any DSRIP projects created under this paragraph must still have only one performer, and that performer must follow all other restrictions on performers.

(f) Pass Two DSRIP process. An RHP's unused DSRIP funds from Pass One are reallocated within the RHP.

(1) Hospitals that are ineligible to participate in Pass One that are interested in becoming performers are allocated equal shares totaling 15% of their RHP's unused Pass One allocation.

(2) Physician group practices not affiliated with academic health science centers that are interested in becoming performers are allocated equal shares totaling 10% of their RHP's unused Pass One allocation.

(3) Performers that participated in Pass One are allocated 75% of the unused Pass One allocation.

(A) To calculate an individual performer's Pass Two allocation:

(i) First, determine each performer's percent of the total Pass One funding used for demonstration years two through five; and

(ii) Second, multiply the result in clause (i) of this subparagraph by 75% of the RHP's unused Pass One allocation.

(B) Performers must work cooperatively to implement complementary DSRIP projects and address outstanding community needs.

(4) Within an RHP, performers may collaborate using individual Pass Two allocations to fund a DSRIP project that is a priority for the RHP in a manner similar to subsection (e)(4) of this section.

(g) Pass Three DSRIP process. [~~Anchor directed use of remaining RHP allocation.~~] If there are unused funds after Pass Two, the anchor may coordinate [~~collaborate~~] with performers in the RHP to determine which additional DSRIP projects to include in the RHP plan.

(h) Valuation of individual DSRIP projects. Each individual DSRIP project and domain must include a rational monetary value. That value is determined by the performer within the strictures described in this subsection.

(1) Except as described in paragraph (2) of this subsection, a hospital performer must ensure that project values comport with the following funding distribution:

Figure: 1 TAC §354.1634(h)(1) (No change.)

(2) A hospital that is exempted from Category 4 reporting may allocate the Category 4 funding to Categories 1, 2, or 3.

(3) A non-hospital performer must ensure that the project values comport with the following funding distribution:

Figure: 1 TAC §354.1634(h)(3) (No change.)

(4) A Category 1 or 2 DSRIP project may be valued at no more than the greater of 10% of a performer's Pass One allocation or \$20 million in total for demonstration years two through five. For DSRIP projects conducted under the collaboration options, the project may be valued at no more than the greater of the sum of 10% of each collaborator's Pass One allocation or \$20 million in total for demonstration years two through five.

(5) Milestones for a Category 1 or 2 DSRIP project must be valued equally within a demonstration year.

(6) The minimum Category 3 funding percentages for the fourth and fifth demonstration years as identified in this subsection must be reserved for outcome improvement targets.

(7) For the third, fourth, and fifth demonstration years, 5% of the possible Category 4 funding is only available to performers that report on the optional domain as it is described in the RHP Planning Protocol.

(i) One-time reassessment of RHP allocation. If at the time of plan modifications as described in §354.1635 of this division (relating to RHP Plan Modification)~~], upon final submission to HHSC~~, an RHP plan does not include the entire RHP allocation, the RHP will have one opportunity to use the remaining RHP allocation for demonstration years three through five. ~~[If the RHP does not use the remaining RHP allocation, the unused portion will be redistributed across regions in a manner prescribed by HHSC. These unused DSRIP funds may be used to fund new DSRIP projects for demonstration years three through five. To receive redistributed funds, an RHP must meet the broad hospital and minimal safety net hospital participation as described in subsection (d)(2)(C) and (D) of this section.]~~

(j) DSRIP performance. Payment for DSRIP project performance is based on achievement of a milestone bundle, outcome, or domain.

(1) A milestone bundle is the compilation of milestones and related metrics associated with a project in a given demonstration year.

(2) The amount of the DSRIP to the performer is determined by the value assigned for the DSRIP project for that demonstration year and the progress made within the milestone bundle.

(3) To calculate the payment for Categories 1 and 2:

(A) First, a performer must fully achieve [~~complete the actions associated with~~] a metric to include that metric in the DSRIP payment calculation.

(B) Second, a milestone is assigned an achievement value of:

(i) 1.0 if all metrics are met;

(ii) 0.75 if at least 75% of the metrics are met;

(iii) 0.5 if at least 50% of the metrics are met;

(iv) 0.25 if at least 25% of the metrics are met; and

(v) zero if less than 25% of the metrics are met.

(C) Third, the achievement values for each milestone are summed.

(D) Fourth, the result of subparagraph (C) of this paragraph is divided by the total possible achievement value of the milestone bundle.

(E) Fifth, the value of the DSRIP project for that demonstration year, as determined under subsection (h) of this section, is multiplied by the result of subparagraph (D) of this paragraph.

(4) ~~Once [Although DSRIP project performance is reported twice a year, once] the action associated with a metric is reported by the performer as complete;[-]~~

(A) that metric may not be counted again toward DSRIP payment calculations; and[-]

(B) the performer may not change the IGT entity affiliated with the performer for purposes of that payment.

(5) Eligibility for payment for Category 4 performance is based on the following:

(A) For a payment of up to 5% of its allocation for the second demonstration year, a performer must submit a status report to HHSC that describes system changes put in place to prepare for Category 4 reporting for the duration of the waiver.

(B) For a payment for a domain in the third, fourth, or fifth demonstration years, a performer must report on all Category 4 measures included in the domain as described in the RHP Planning Protocol.

(6) A performer may assign different values to Category 3 outcomes, including both process milestones and outcome improvement targets.

(A) A performer must fully achieve metrics associated with process milestones to receive DSRIP related to those milestones.

(B) To calculate a payment for an outcome improvement target:

(i) First, an outcome improvement target is assigned an achievement value of:

(I) 1.0 if the outcome improvement target is achieved;

(II) 0.75 if the outcome improvement target is at least 75% achieved;

(III) 0.5 if the outcome improvement target is at least 50% achieved;

(IV) 0.25 if the outcome improvement target is at least 25% achieved; or

(V) zero if the outcome improvement target is less than 25% achieved.

(ii) Second, the result in clause (i) of this subparagraph is multiplied by the value listed in the RHP plan for that particular outcome improvement target.

(7) If a performer does not complete all milestones as specified in its RHP plan for a particular demonstration year, the performer may carry forward the available DSRIP funding associated with that milestone bundle until the end of the following demonstration year.

(A) The performer must complete the remaining milestones during the following demonstration year to receive full payment for those milestones.

(B) A performer must provide a narrative description on the status of the missed milestones and outcome improvement targets and outline the performer's plan to achieve the missed milestones or targets by the end of the following demonstration year.

(C) This provision does not apply to Category 4.

(8) If a performer does not complete the remaining milestones as described in paragraph (7) of this subsection or the Category 4 reporting in its particular year, the associated DSRIP funding is forfeited.

§354.1635. RHP Plan Modification.

(a) The plan modification process begins once all RHP plans receive initial CMS approval as described in §354.1622(e) of this subchapter (relating to RHP Plan Assessment). This process allows for RHPs and the State to utilize unclaimed RHP allocations.

(b) If an RHP does not utilize its entire allocation for the second demonstration year, the remaining allocation can be utilized by HHSC for state initiatives. These initiatives must be accomplished through the DSRIP program.

(c) If an RHP does not utilize its entire allocation for the third, fourth, and fifth demonstration year, that RHP may propose three-year DSRIP projects.

(1) Each RHP must submit a list of all DSRIP projects from which the three-year DSRIP projects are selected.

(A) Each three-year DSRIP project on the list must be chosen from a subset of the RHP Planning Protocol as determined by HHSC.

(B) Each three-year DSRIP project on the list must be ready for immediate implementation upon approval.

(C) An RHP must prioritize the three-year DSRIP projects based on regional needs except that the listed projects must alternate by affiliated IGT entity.

(D) Each three-year DSRIP project must identify and have written confirmation of the IGT source.

(E) Each three-year DSRIP project must demonstrate significant benefit to the Medicaid and indigent populations.

(2) Based on the amount of RHP allocation remaining for each RHP after CMS provides final valuation approvals, some three-year DSRIP projects on the priority list will be reviewed for addition to the RHP plan.

(d) If an RHP is unable to utilize the remaining allocation in accordance with subsection (c) of this section, the remaining allocation may be utilized by HHSC.

(e) If DSRIP funds are still available following HHSC action in subsection (d) of this section, the remaining funds are redistributed to the RHPs that utilized their full RHP allocation. The funds are proportionately allocated to RHPs based on their share of the original allocation as described in §354.1634(b) of this division (relating to Waiver Pool Allocation and Valuation). The process for determining allocations to providers within an RHP will be the same as described in §354.1634(g) of this division. To receive redistributed funds, an RHP must continue to meet the broad hospital and minimal safety net hospital participation levels as described in §354.1634(d)(2)(C) and (D) of this division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302423

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning Attendant Compensation Rate Enhancement.

Background and Justification

This proposal incorporates changes to cost reporting requirements in §355.112 that were proposed in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2582) and subsequently were withdrawn.

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.112 to simplify Attendant Compensation Rate Enhancement reporting requirements for day habilitation services in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) programs. The proposed amendment also incorporates changes to reflect person first respectful language.

The existing rule at §355.112(v) requires HCS, TxHmL, and ICF/IID providers who contract with a non-related party to provide day habilitation to report job trainer and job coach hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement in unique cost report items. These providers typically pay their day habilitation contractor a set daily or hourly amount for each individual receiving day habilitation services. The detailed information required under §355.112(v) is often not available to the provider who is required to complete the cost report. As a result, HCS, TxHmL, and ICF/IID participation in the Attendant Compensation Rate Enhancement for day habilitation services lags behind participation levels for other programs and services.

HHSC is proposing to reduce reporting challenges for HCS, TxHmL, and ICF/IID providers contracting with non-related parties to provide day habilitation by allowing these providers to report their total contracted day habilitation costs on a single cost report item. HHSC will then allocate a standard percentage of these costs (50 percent) to attendant compensation for purposes of determining compliance with Attendant Compensation Rate Enhancement spending requirements. The standard percentage was developed through analysis of day habilita-

tion costs reported by providers who provide day habilitation in-house or through a contract with a related party.

In addition, HHSC proposes amending §355.112 to incorporate person first respectful language in compliance with Texas Government Code §531.0227 as added by House Bill 1481, 82nd Texas Legislature, Regular Session, 2011.

Finally, Section 1, Senate Bill (S.B.) 45, 83rd Legislature, Regular Session, 2013 requires the Department of Aging and Disability Services (DADS) to add supported employment and employment assistance to the Community-Based Alternatives (CBA) program and Medically Dependent Children Program (MDCP). It also adds employment assistance to Community Living Assistance and Support Services (CLASS). Because CBA and CLASS are included among the programs eligible to participate in the Attendant Compensation Rate Enhancement (the Enhancement Program) and because the Enhancement Program is intended to give providers incentives to increase compensation levels for employees providing direct assistance to individuals with Activities of Daily Living and Instrumental Activities of Daily Living such as supported employment and employment assistance direct care workers, HHSC proposes amending §355.112 to add supported employment and employment assistance direct care workers as individuals that are considered to be attendants for purposes of the enhancement. Because S.B. 45 is effective September 1, 2013, DADS plans to add supported employment and employment assistance to CBA and MDCP, and employment assistance to CLASS, as soon as possible pending required federal approval with the option of the amendment being effective September 1, 2013.

Section-by-Section Summary

HHSC proposes amendments to §355.112 as follows:

Modify subsection (b)(5) to add supported employment and employment assistance direct care workers to the definition of an attendant.

Modify subsection (ff)(1) to limit detailed day habilitation reporting requirements to providers who provide day habilitation in-house and providers who contract with a related party to provide day habilitation.

Modify subsection (ff)(2) to indicate that providers who contract with a non-related party to provide day habilitation may report their payments to the non-related party contractor in a single cost report item and that HHSC will allocate 50 percent of reported payments to the attendant compensation cost area.

Modify subsection (ff)(3) to indicate that providers must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports.

Make changes throughout the section to replace the old title of the ICF/IID program and other wording in the rule with language that is considered person first respectful.

Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Jenkins does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The proposed amendment does not require any changes in practice or any additional cost to a contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the expected public benefit is that the amendment will reduce the reporting and documentation burden for providers who participate in the Attendant Compensation Rate Enhancement Program, eliminating disincentives toward participation for providers who contract with non-related parties for the provision of day habilitation services. Additional public benefit will accrue from the elimination of disrespectful language. Finally, it is expected that the public will benefit from the opportunity for enhanced compensation to supported employment and employment assistance direct care workers, resulting in better quality of care for individuals served.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 707-6085. Written comments on the proposed amendment may be submitted to Ms. Myers by facsimile at (512) 730-7475, by e-mail to judy.myers@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Texas Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b)(2), which provides HHSC with the au-

thority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment affects the Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions)) [Persons with Mental Retardation (ICF/MR)], Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)--HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to individuals [the clients] with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/IID [ICF/MR], DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the ICF/IID [ICF/MR], DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Mental Retardation Professionals (QMRPs), assistant QMRPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting individuals [consumers] in the ICF/IID [ICF/MR], DAHS, RC, and

CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings.

(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/IID [ICF/MR], RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers, [and] job coaches, supported employment direct care workers, and employment assistance direct care workers.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID [ICF/MR], attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement.

(B) For providers delivering both RC and CBA AL/RC services [to both RC and CBA AL/RC clients] in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/IID [ICF/MR], HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID [ICF/MR] program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/IID [ICF/MR], HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily,

the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/IID [ICF/MR], HCS and TxHmL programs, component codes of a participating provider are [is] voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/IID [ICF/MR], HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365

days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID [ICF/MR], HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/IID [ICF/MR] program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.457 of this title. For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering both RC and CBA AL/RC services [to both RC and CBA AL/RC clients] in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering both HCS and TxHmL services [to both HCS and TxHmL clients], participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID [ICF/MR], participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL,

participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subsection [subparagraph] (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report data-base used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD and by 1.07 for RC; CBA--AL/RC; and ICM AL/RC. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID [ICF/MR] DH, ICF/IID [ICF/MR] residential services, HCS SL/RSS, HCS DH, HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID [ICF/MR], the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Intro-

duction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) ICF/IID [ICF/MR] providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/IID [ICF/MR]; HCS; and TxHmL

programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending

requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering both RC and CBA AL/RC services [~~to both RC and CBA AL/RC clients~~] in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

(3) In cases where more than ~~then~~ one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's next full-year cost report. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United State (U.S.) mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature

authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request

for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced attendant compensation rate funds.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period and the product is multiplied by the units of service provided during the reporting period as determined by HHSC.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/IID [ICF/MR], HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC and ICM AL/RC programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/IID [ICF/MR], HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation in-house or who contracts with a related party to provide day habilitation will report job [Job] trainer and job coach compensation and hours [must be reported] on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). [This requirement applies to providers who directly provide day habilitation "in-house"; providers who contract with a related party to provide day habilitation and providers who contract with a non-related party to provide day habilitation.] Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (h)(2) and (3) of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation attendant costs in order to determine the total attendant compensation spending for day habilitation services as described in subsection (s) of this section.

(3) [(2)] The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report. [This requirement includes ensuring access to records held by the provider, a related-party day habilitation provider and a non-related-party day habilitation provider.]

[(3)] Failure to comply with the requirements of paragraphs (1) and (2) of this subsection will result in recoupment of all attendant compensation rate enhancement funds associated with the day habilitation service for the provider for the reporting period in question.]

(4) HHSC will require each ICF/IID [ICF/MR], HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/IID [ICF/MR], HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302424

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.307

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.307, concerning Reimbursement Setting Methodology.

Background and Justification

The 2014-15 General Appropriations Act, Senate Bill (S.B.) 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 69) states that it is the intent of the Legislature that the Executive Commissioner of HHSC develop and implement a Medicaid reimbursement methodology for the pediatric long term care facility rate class that includes the existing facility-specific prospective cost-based interim reimbursement rate and adds an annual cost-based retrospective cost settlement process. It is the intent of the Legislature that an annual settlement payment only be made for fiscal years in which the average daily census for the facility in that year was less than the average daily census of the prior fiscal year, except that no settlement shall be made for fiscal years in which the average daily census for the facility exceeded 85 percent or for fiscal years in which the facility's Medicaid revenues exceeded its Medicaid allowable costs.

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.307 to add a cost-based retrospective settlement process to the reimbursement methodology for the special reimbursement class for pediatric care facilities in compliance with the direction set forth in Rider 69.

Section-by-Section Summary

HHSC proposes an amendment to §355.307 as follows:

Revise subsection (c)(3) to add a new subparagraph (F) to describe the annual cost-based retrospective settlement process for pediatric care facilities.

Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Jenkins does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the expected public benefit is that pediatric long term care facility care will remain a fiscally viable option for providers in the state of Texas, thus ensuring access to this type of care.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Laura Marble in the HHSC Rate Analysis Department by telephone at (512) 707-6078. Written comments on the proposal may be submitted to Ms. Marble by fax to (512) 730-7475; by e-mail to laura.marble@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Texas Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; the Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements; and the 2014-15 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 69), which requires HHSC to develop an annual cost-based retrospective cost settlement process.

The amendment affects the Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.307. *Reimbursement Setting Methodology.*

(a) Case mix classes. The Texas Health and Human Services Commission (HHSC) reimbursement rates for nursing facilities (NFs) vary according to the assessed characteristics of the recipient. Rates are

determined for 34 case mix classes of service, plus a 35th, temporary classification assigned by default when assessment data are incomplete or in error and a 36th classification assigned by default when an assessment is missing.

(b) Reimbursement determination. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Rate Components. Under the case mix methodology, reimbursements are comprised of five cost-related components: the direct care staff component; the other recipient care component; the dietary component; the general/administration component; and the fixed capital asset component. The direct care staff component is calculated as specified in §355.308 of this title (relating to Direct Care Staff Rate Component).

(A) The dietary rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(B) The general/administration rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(C) The fixed capital asset component is constant across all case mix classes and is calculated as follows:

(i) Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land and improvements. Appraised values for this purpose are determined as follows:

(I) For proprietary facilities, tax exempt facilities provided an appraisal from their local property taxing authority, and tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined as described in §355.306(g) of this title (relating to Cost Finding Methodology).

(II) For tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is not in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined by indexing the facility's allowable appraised value as determined in §355.306(g) of this title (relating to Cost Finding Methodology) to the median increase in appraised values among contracted facilities in the state as a whole from the reporting period coinciding with the first year of the facility's five-year interval to the reporting period upon which reimbursements are to be based.

(III) Those facilities that do not report an allowable appraised value as described in §355.306(g) of this title (relating to Cost Finding Methodology) are not included in the array for purposes of calculating the use fee.

(ii) Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the personal consumption expenditures (PCE) chain-type price index from the cost reporting year to the rate year.

(iii) Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(iv) Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(v) The use fee is limited to the lesser of the fee as calculated in clauses (i) - (iv) of this subparagraph, or the fee as calculated by inflating the fee from the previous rate period by the forecasted rate of change in the PCE chain-type price index.

(2) Case mix classification system. All Medicaid recipients are classified according to the Resource Utilization Group (RUG-III) 34 group classification system, Version 5.20, index maximizing, as established by the state and the Centers for Medicare and Medicaid Services (CMS). Each of the case-mix groups, including the default groups, is assigned CMS standard nursing time measurements for Registered Nurses (RNs), Licensed Vocational Nurses (LVNs) and aides (Medication Aides and Certified Nurse Aides). These measurements indicate the amount of staff time required on average to deliver care to residents in that group.

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the RUG-III groups and for the default groups according to the following procedures:

(A) For each RUG-III group, calculate a total LVN-equivalent minute statistic by converting the CMS standard nursing time measurements for RNs, LVNs and aides into Texas-specific LVN-equivalent minutes as per §355.308(j) of this title (relating to Direct Care Staff Rate Component) and summing the converted figures.

(B) Weight the total LVN-equivalent minute statistics from subparagraph (A) of this paragraph for each RUG-III group except the default groups as follows and determine the statewide weighted average total adjusted minutes:

(i) For rates effective September 1, 2008, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of December 2007 and ending the last day of February 2008.

(ii) For rates effective September 1, 2009, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September 2008 and ending the last day of February 2009.

(iii) For rates effective September 1, 2011 and thereafter, for the other recipient care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base. For the direct care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September, 2008 and ending the last day of February, 2009.

(C) Determine the standardized statewide case mix index for each of the RUG-III groups by dividing each of the total LVN-equivalent minute statistics described under subparagraph (A) of this paragraph by the statewide weighted average total adjusted minutes described under subparagraph (B) of this paragraph.

(D) The other recipient care rate component varies according to case mix class of service and is calculated as follows. Adjust the raw sum of other recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §355.306 of this title (relating to Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, multiply each of the standardized statewide case mix indexes from subparagraph (C) of this paragraph by the average other recipient care rate component.

(E) Total case mix per diem rates vary according to case mix class of service and according to participant status in Direct Care Staff Rate enhancements described in §355.308 of this title (relating to Direct Care Staff Rate Component).

(i) For each participating facility, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff rate component for that participating facility as determined in §355.308(1) of this title (relating to Direct Care Staff Rate Component).

(ii) For nonparticipating facilities, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff base rate component as determined in §355.308(k) of this title (relating to Direct Care Staff Rate Component).

(F) Qualifying ventilator-dependent residents may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must require artificial ventilation for at least six consecutive hours daily and the use must be prescribed by a licensed physician.

(ii) A ventilator-dependent resource differential case mix index for the other recipient care rate component is calculated by subtracting the standardized statewide case mix index for the SE1

RUG-III case mix group from subparagraph (C) of this paragraph from 3.61. A ventilator-dependent resource differential case mix index for the direct care staff base rate component is calculated by dividing the resource differential case mix index for the other recipient care rate component by 0.9908.

(iii) The per diem rate supplement is calculated by multiplying the resource differential case mix index for the other recipient care rate component times the per diem average other recipient care rate component, as described in subparagraph (D) of this paragraph and multiplying the resource differential case mix index for the direct care staff base rate component by the average direct care staff base rate component as described in §355.308(k) of this title (relating to Direct Care Staff Rate) and summing the products.

(iv) The supplemental reimbursement for residents requiring continuous artificial ventilation is 100% of the per diem ventilator rate supplement.

(v) The supplemental reimbursement for residents not requiring continuous artificial ventilation daily but requiring artificial ventilation for at least six consecutive hours daily is 40% of the per diem ventilator rate supplement.

(G) Qualifying children with tracheostomies requiring daily care may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement as specified in subparagraph (F) of this paragraph.

(H) Children with qualifying conditions as specified in subparagraphs (F) and (G) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who are also ventilator-dependent are not eligible to receive both supplemental reimbursements.

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility--Except as provided for in subparagraph (C) of this paragraph, a pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85%

or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.

(B) Distinct unit--A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(C) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(i) Only for a pediatric care facility that is designated in its entirety as a pediatric care facility, a limited number of adults who were admitted to the facility as children but who are no longer children (i.e., individuals who have "aged in place") may be counted as children for purposes of determining if the facility meets the requirements for remaining a pediatric care facility described in subparagraph (A) of this paragraph. The number of such individuals who may be counted as children for purposes of determining if the facility continues to meet the requirements for remaining a pediatric care facility is limited to 15% of the average daily census of the facility.

(ii) Individuals who have "aged in place" as described in clause (i) of this subparagraph may not be counted toward meeting the requirements for a facility to initially become a pediatric care facility nor can they be counted toward meeting the requirements for a distinct unit to remain a pediatric care facility.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process) except that payment rates are determined annually, coincident with the state's fiscal year, within available funds. A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.

(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the RUG level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(E) Pediatric care facilities are not eligible to participate in §355.308 of this title (relating to Enhanced Direct Care Staff Rate).

(F) The facility's cost-based retrospective cost settlement will be determined annually. An annual settlement payment will only be made for fiscal years in which the average daily census for the facility in that year was less than the average daily census of the prior fiscal year, except that no settlement will be made for fiscal years in which the average daily census for the facility exceeded 85 percent or for fiscal years in which the facility's Medicaid revenues exceeded its Medicaid allowable costs.

(4) If HHSC determines that a pediatric care facility that is designated in its entirety as a pediatric care facility no longer qualifies as a member of such class according to paragraph (2) of this subsection, HHSC will notify the facility in writing.

(A) Within 30 calendar days of the date on the written notification, HHSC Rate Analysis must receive a written compliance plan from the facility as described in subparagraph (B) of this paragraph. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day receipt of the plan will be accepted.

(B) The compliance plan must indicate the facility's intent to, within 180 calendar days of the date of HHSC's initial written notification to the facility, come into compliance with paragraph (2) of this subsection by:

(i) Managing a sufficient number of admissions and discharges to come into compliance with the requirements of paragraphs (2)(A) and (2)(C) of this subsection to remain a member of the pediatric care facility special reimbursement class;

(ii) Creating a distinct unit of the facility as described under paragraph (2)(B) of this subsection; or

(iii) Withdrawing the entire facility from the pediatric care facility special class.

(C) HHSC will make a written determination regarding approval or disapproval of the compliance plan. A facility that submits a compliance plan that is subsequently disapproved will cease being reimbursed as a member of the pediatric facility special class on the first day of the month following HHSC's disapproval of the compliance plan.

(D) A compliance plan that is not received by the stated deadline will not be accepted, and the facility will be removed from the pediatric care facility special reimbursement class retroactive to the first day of the month following the date of HHSC's initial written notification to the facility.

(E) A facility that obtains approval of its compliance plan from HHSC Rate Analysis will continue to be reimbursed as a member of the pediatric care special class until 180 calendar days of the date of HHSC's initial written notification to the facility. If by that time the facility has not achieved the stated goal of its compliance plan, the facility will be removed from the pediatric care special class effective the first day of the following month.

(F) If, at any time, HHSC determines that a facility that has come into compliance with paragraph (2) of this subsection by managing a sufficient number of admissions and discharges, as described in subparagraph (B)(i) of this paragraph, no longer qualifies as a member of such class, that facility will be excluded from the pediatric care special class for 365 days from the date HHSC makes its determination. The facility may apply to rejoin the class on the 366th day.

(G) A facility that is removed from or withdraws from the pediatric care special class will be considered a new facility, as described in §355.308(e) of this title for purposes of enrollment in the Nursing Facility Direct Care Staff Rate enhancement.

(H) A facility that is removed or withdraws from the pediatric care special class may not re-enter the class within one year of its removal or withdrawal.

(d) Nurse aide training and competency evaluation costs.

(1) DADS reimburses nursing facilities for the actual costs of training and testing nurse aides as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training provided after October 1, 1990, for:

(A) actual training course expenses up to a set amount determined by DADS per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included on the reimbursement voucher.

(3) Training program costs that exceed the DADS cost ceiling must have prior approval from DADS before costs can be reimbursed. A written request to Provider Billing Services must include:

(A) name and vendor number of facility.

(B) description of training program for which the facility is seeking reimbursement approval, to include:

(i) name, telephone number and address of the nurse aide training and competency evaluation program (NATCEP);

(ii) whether the NATCEP program is facility or non-facility-based; and

(iii) name of the NATCEP program director.

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling. The explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP.

(D) an explanation of why the nursing facility cannot utilize a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost efficient training courses. The explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in clause (i) of this subparagraph, as specified in subparagraph (C)(i) or (ii) of this paragraph.

(4) All prior approval requests as outlined in paragraph (3) of this subsection must be submitted to DADS, Provider Billing Services that:

(A) may request additional information in order to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by DADS before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to DADS audits. If substantiating documentation for amounts billed to DADS cannot be verified, DADS will immediately recoup funds paid to the facility.

(7) Individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A) - (E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by, or received an offer of employment from, a nursing facility not later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than six months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to DADS with proof that the individual has been employed by a facility for no less than six months.

(9) Individuals who leave nursing facility employment before accruing the required six months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50% reimbursement as long as the individual was employed for no less than three months.

(10) Reimbursement to individuals may not exceed the reimbursement ceiling as detailed in paragraph (1)(A) of this subsection.

(e) Oxygen costs. Oxygen costs incurred on or after January 1, 1995, will not be reimbursed on cost reimbursement vouchers. Those oxygen costs must be reported as expenses on the cost report.

(f) TILE to RUG-III Hold Harmless Transition. For rates effective September 1, 2008, payment rates for the direct care staff component and the other recipient care component will be updated within available funds, payment rates for the dietary, general/administration and fixed capital asset rate components will be equal to the rates in effect on August 31, 2008 times 1.025, payment rates for the professional and general liability insurance add-on and the professional-only liability insurance add-on will be equal to the rates in effect on August 31, 2008 times 1.024, and the payment rate for the general-only liability insurance add-on will be equal to the rate in effect on August 31, 2008 times 1.018.

(1) To calculate the updated direct care staff per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 0.9908, which is the weighted average TILE case mix index for the 1998 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management

System (CMS) on or around June 1, 2008 and multiply each product by the average updated direct care staff rate component.

(2) To calculate the updated other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 1.0267, which is the weighted average TILE case mix index for the 2005 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated other recipient care rate component.

(3) For state fiscal year 2009 only, for each Medicaid-contracted nursing facility, HHSC will:

(A) Calculate the sum of the weighted average TILE direct care staff base rate (with no enhancements) and other recipient care rate based on the TILE rates for these cost areas in effect on August 31, 2008 and the facility's approved to be paid days of service by TILE from January 1, 2008 through June 30, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around November 3, 2008.

(B) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(C) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (B) of this paragraph. If the sum from subparagraph (A) is greater than the sum from subparagraph (B), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (B) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(D) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(E) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (D) of this paragraph. If sum from subparagraph (A) is greater than the sum from subparagraph (D), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (D) times the facility's approved to be paid days of service for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(F) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008, and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010.

(G) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (F) of this paragraph.

(i) If the sum from subparagraph (A) is greater than the sum from subparagraph (F), determine the difference between the sum from subparagraph (A) and the sum from subparagraph (F) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010, and subtract the hold harmless payments made under subparagraphs (C) and (E) from the product calculated in this clause.

(I) If the result is a positive number, DADS will pay the facility the difference.

(II) If the result is a negative number, DADS will recoup the difference from the facility.

(ii) If the sum from subparagraph (A) is less than the sum from subparagraph (F) and the facility received a hold harmless payment under subparagraph (C) and/or (E), DADS will recoup from the facility the hold harmless payments made under these subparagraphs.

(4) "On or around" as used in this subsection means the date that the state pulls the information as described in the subsection as close to the dates specified in subsection as feasible and determined by the state. Once the state does the data pull, no other pulls will be made for the purpose of calculating the values described in this subsection. This means that once the paid days of service for a paragraph have been determined for purposes of calculating the TILE to RUG-III hold harmless transition, they will not be updated for late Minimum Data Set (MDS) submissions, Utilization Review RUG-III changes, retroactive eligibility or any other reason.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302463

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, and §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program.

Background and Justification

These rules establish the reimbursement methodologies for the Community-Based Alternatives (CBA), the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care, and the Medically Dependent Children

Program (MDCP) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rules, is proposing amendments to these rules to add reimbursement methodologies for supported employment and employment assistance.

These amendments are being proposed to comply with Section 1, S.B. 45, 83rd Legislature, Regular Session, 2013, which requires DADS to add supported employment and employment assistance to the CBA and MDCP programs. Because S.B. 45 is effective September 1, 2013, DADS plans to add supported employment and employment assistance to CBA and MDCP, as soon as possible pending required federal approval with the option of the amendment being effective September 1, 2013.

The amendments are also proposed to update cross references and remove unnecessary language.

Section-by-Section Summary

The proposed amendments to §355.503 are as follows:

- Revise subsections (c)(1) and (c)(1)(F) to include supported employment and employment assistance.
- Revise subsection (c)(1)(G)(ii) to correct a cross reference.
- Revise subsection (c)(2)(B) to update a cross reference.
- Revise subsection (d) to remove unnecessary language.
- Revise subsection (e)(5)(B) to update a cross reference and remove unnecessary language.

The proposed amendments to §355.507 are as follows:

- Revise subsection (c) to update cross references and remove unnecessary language.
- Add new subsection (f) to detail a reimbursement methodology for supported employment and employment assistance and renumbers the subsequent subsection.

Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rules are in effect, there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

Mr. Jenkins does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendments during the first five years the rules will be in effect. The amendments will not affect local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendments are in effect, the expected public benefit is providers of employment assistance and supported employment will know the reimbursement

methodology for providing these new services in the CBA and MDCP programs.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 707-6085. Written comments on the proposed amendments may be submitted to Ms. Myers by facsimile at (512) 730-7475; by e-mail to judy.myers@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Texas Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect the Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar pro-

grams, consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, supported employment, employment assistance, and day activity and health services will be determined on a fee-for-service basis in the following manner:

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, supported employment, employment assistance, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(G) For personal assistance services, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in clause (i) of this subparagraph [subparagraph (G)(i) of this paragraph] as determined in subparagraphs (A) - (E) of this paragraph. An allowable

cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home will be determined as a per day reimbursement using a method based on modeled projected expenses, which are developed using data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(E)(iii) [~~(e)(2)(F)(iii)~~] of this title (relating to Reimbursement Methodology for Residential Care).

(i) The per day reimbursement for attendant care for each of the six levels of care will be determined based upon client need for attendant care.

(ii) A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.

(iii) The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL/RC facility is determined using the same methodology as the reimbursement for AL/RC except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care 3 will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care 3 setting, as specified by the Department of Aging and Disability Services, and using staff

costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care 3 rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care 3 rates.

(3) Emergency Response Services. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this title (relating to Reimbursement Methodology for Emergency Response Services (ERS)).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for CBA participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (~~relating to Introduction~~).

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

(3) Number of cost reports to be submitted.

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(b)(17)(K) [§355.103(17)(K)] of this title [~~(relating to Specifications for Allowable and Unallowable Costs)~~].

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) The rates for nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) will be determined in accordance with §355.502 of this title (Relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(c) The rates for personal assistance services (PAS) without delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). The rates for PAS with delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title [~~(relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program)~~] and the add-on payment for the highest level of attendant compensation rate enhancement in accordance with §355.112(n) of this title [~~(relating to Attendant Compensation Rate Enhancement)~~].

(d) The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(e) Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care. The base rates used in this calculation do not include nursing facility rate add-ons.

(f) The rates for supported employment and employment assistance will be based upon the CBA approved rates for supported employment and employment assistance in accordance with §355.503 of this title.

(g) [(f)] The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302425

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

Background and Justification

This proposal incorporates changes regarding uniform cost report excusal procedures in §355.7103 that were proposed in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2591) and subsequently were withdrawn.

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.7103 to reference the uniform cost report excusal rules and to outline how the 24-Hour Residential Child-Care (24 RCC) rates effective September 1, 2013, will be determined.

Cost Report Excusals

Normally, all providers are expected to submit a cost report; however, there are circumstances when a provider automatically may be excused from submission of a cost report. Section 355.7103(f)(4) specifies the cost report excusal requirements for

the 24 RCC program. In 2012, uniform cost report excusal requirements for all programs, including 24 RCC, were incorporated into §355.105, General Reporting and Documentation Requirements, Methods, and Procedures. The cost report excusal requirements for 24 RCC in §355.7103 are now obsolete and are proposed for removal.

Circumstances in §355.105 under which HHSC may excuse 24 RCC providers from the requirement to submit a cost report include the following:

- if there were no billable services provided during the provider's cost-reporting period;
- if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month;
- if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency;
- if all of the provider's contract(s) required to be included on the cost report have been terminated prior to the cost-report due date;
- if the provider's contract was not renewed;
- if only Basic Level services were provided;
- if the total number of state-placed days (Department of Family and Protective Services (DFPS) days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;
- if the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;
- for facilities that provide Emergency Care Services only, if the occupancy rate was less than 30 percent during the cost-reporting period;
- for all other facility types except Child-Placing Agencies and those providing Emergency Care Services, if the occupancy rate was less than 50 percent during the cost-reporting period.

Payment Rates to be Effective September 1, 2013

The proposed amendment will adjust payment rates for the 24 RCC program to comply with the 2014-15 General Appropriations Act (Article II, Health and Human Services, 83rd Legislature, Regular Session, 2013), which appropriated general revenue funds for provider rate increases for this program. The proposed amendment will also delete language describing how the CPA rate adjustment is divided between retainage and pass-through funds for foster homes. This language is proposed for deletion because HHSC does not set a rate for retainage and because the rate for foster homes is described earlier in the rule.

Section-by-Section Summary

The proposed amendments to §355.7103 are as follows:

- Revise subsection (f)(4) to replace language specifying when a 24 RCC provider is excused from submitting a cost report with a reference to the uniform excusal rules at §355.105.
- Revise subsection (q) regarding the percentage of rate increase to be effective on September 1, 2013, for services provided in the different types of settings and to delete language describing how the CPA rate adjustment is divided between retainage and pass-through funds for foster homes.

Fiscal Note

Cindy Brown, Chief Financial Officer for the Department of Family and Protective Services, has determined that during the first five-year period the amendment is in effect there will be a fiscal impact to the state government of \$14,981,073 for state fiscal year (SFY) 2014, \$15,518,592 for SFY 2015, \$15,518,592 for SFY 2016, \$15,518,592 for SFY 2017, \$15,518,592 for SFY 2018, and \$15,518,592 for 2019. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Ms. Brown does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rules will be in effect. The amendment will not affect local employment.

Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis for HHSC, has determined that there will be no economic effect on small businesses and micro-businesses as a result of enforcing or administering the amendment. The proposed amendment does not require any changes in practice or any additional cost to a contracted provider.

Public Benefit

Ms. McDonald has also determined that, for each year of the first five years the amendment is in effect, the expected public benefit is that the amendment will make the rules regarding excusal from cost report submission as consistent as possible and will consolidate them in a single location. This will enable the public to readily find and have a better understanding of the requirements for excusal.

In addition, the expected public benefit from the revision to subsection (q) is that providers of 24 RCC services will be paid the proper reimbursement rates in compliance with legislative appropriations.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Cheryl Jablonski in the HHSC Rate Analysis Department by telephone at (512) 707-6072. Written comments on the proposal may be submitted to Ms. Jablonski, Senior Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-

9030; by fax to (512) 730-7475; or by e-mail to Cheryl.Jablon-ski@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule; and Texas Family Code §264.101(d), which authorizes the Executive Commissioner of HHSC to adopt rules establishing criteria and guidelines for the payment of foster care.

The amendment implements Government Code §531.033 and §531.055; and Texas Family Code §264.101.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The following is the authority and process for determining payment rates:

(1) For payment rates established prior to September 1, 2005, the Department of Family and Protective Services (DFPS; formerly the Department of Protective and Regulatory Services) reviewed payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, DFPS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates were presented for adoption, DFPS sent rate packets containing the proposed rates and average inflation factor amounts to provider association groups. DFPS also sent rate packets to any other interested party, by written request. Providers who wished to comment on the proposed rates could attend the open meeting and give public testimony. Notice of the open meeting was published on the Secretary of State's web site at <http://www.sos.state.tx.us/open>. DFPS notified all foster care providers of the adopted rates by letter.

(2) For payment rates established September 1, 2005 and thereafter, the Health and Human Services Commission (HHSC) approves rates that are statewide and uniform. In approving rate amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be

made available to the public. This material will be furnished to anyone who requests it.

(b) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, DFPS analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) DFPS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other DFPS day-care programs.

(B) DFPS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, DFPS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a DFPS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in DFPS specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and DFPS specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, DFPS specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for DFPS foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for DFPS foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

- (A) child-placing agency;
- (B) independent foster family/group home;
- (C) independent therapeutic foster family/group home;
- (D) independent habilitative foster family/group home;

and

(E) independent primary medical needs foster family/group home.

(d) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, DFPS applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

- (A) residential treatment center;
- (B) therapeutic camp;
- (C) institution for mentally retarded;
- (D) basic care facility;
- (E) halfway house; and
- (F) maternity home.

(e) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for emergency shelters as follows:

(1) DFPS analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, level of care rates for contracted providers including child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) DFPS excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) DFPS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by DFPS before provision of services.

(3) DFPS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) DFPS requires all contracted providers to submit a cost report unless they meet one or more of the conditions in §355.105(b)(4)(D) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). [complete the first portion of the cost report including contracted provider identification; preparer/contact person; facility license type; reporting period; days of service by level of care provided during the reporting period; facility capacity and occupancy status; and cost report exemption determination. Providers that meet any one of the following criteria are not required to complete the entire cost report:]

[(A) total number of days of service for state-placed children equal to or less than 10% of total days of service;]

[(B) total number of DFPS days of service equal to or less than 10% of total days of service;]

[(C) no services provided to DFPS children;]

[(D) services provided to only Level of Care 1 children;]

[(E) contract with DFPS terminated or was not renewed;]

[(F) occupancy rate for emergency shelters is less than 30%; or]

[(G) occupancy rate for all other facility types, except for child-placing agencies, is less than 50%.]

[(5) The occupancy rate equals the total number of days of service provided during the reporting period divided by the maximum operating capacity. The maximum operating capacity is the number of

residents the facility is equipped to serve multiplied by the number of days in the reporting period.]

[(6) All contracted providers not meeting the exemption criteria defined in paragraph (4) of this subsection are included in the rate-setting population and must complete the entire cost report for rate-setting purposes, including:]

[(A) all child-placing agencies because they do not report occupancy;]

[(B) emergency shelters with a 30% or more overall occupancy rate; and]

[(C) all other facilities with a 50% or more overall occupancy rate.]

(g) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, a rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child-placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child-placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 1 TAC §355.7103(g)(1)(B)(iv) (No change.)

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

- (i) direct care labor;
- (ii) total payroll taxes/workers compensation; and
- (iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

- (A) direct care non-labor for dietary/kitchen;
- (B) building and equipment;
- (C) transportation;
- (D) tax expense; and
- (E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

- (A) administrative wages/benefits;
- (B) administration (non-salary);
- (C) central office overhead; and
- (D) foster family development.

(4) The allocation methods described in paragraphs (1) - (3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state-placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. DFPS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to DFPS when the rates are prepared. Upon written request, DFPS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium.

(k) For the SFY 2004 through 2005, DFPS determines payment rates using the rates determined for SFY 2002 and 2003 from subsections (a) - (h) of this section, with adjustments for the transition from a six level of care system to a four service level system of payment rates.

(l) For the state fiscal year 2006 through 2007 biennium, the 2005 payment rates in effect on August 31, 2005 will be adjusted by equal percentages based on a prorata distribution of additional appropriated funds.

(m) For the state fiscal year 2008 through 2009 biennium, rates are paid for each level of service identified by the DFPS. For foster

homes, the payments effective September 1, 2007 through August 31, 2009 for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2007 plus 4.3 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2007, through August 31, 2009 for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Additional appropriated funds remaining after the rate increase for foster homes and CPAs shall be distributed proportionally across general residential operations and residential treatment centers based on each of these provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

(n) HHSC may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(o) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) of this section.

(p) Payment rates for psychiatric step-down services are determined on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(q) Rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2013 [2009], for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2013 [2009], plus 4.30 [3-33] percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2013 [2009], for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2013 [2009], plus 6.12 [2-44] percent[; which is equivalent to a 1-33 percent increase for CPA retainage and a 3-33 percent increase in pass-through funds for foster homes]. For General Residential Operations (GROs) and Residential Treatment Centers (RTCs), the rates effective September 1, 2013 [2009], for each level of service will be equal to the rate paid to GROs and RTCs for that level of service in effect August 31, 2013 [2009], plus 7.13 [9-30] percent. For facilities providing emergency care services, the rate effective September 1, 2013 [2009], will be equal to the rate in effect August 31, 2013 [2009], plus 5.86 [8-68] percent. For psychiatric step-down services, the rate effective September 1, 2013 [2009], will be equal to the rate in effect on August 31, 2013 [2009].

(r) Payment rates for Single Source Continuum Contractors under Foster Care Redesign are determined on a pro forma basis in accordance with §355.105(h) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.
TRD-201302426

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 424-6900

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8052, concerning Inpatient Hospital Reimbursement, and §355.8060, concerning Reimbursement Methodology for Freestanding Psychiatric Facilities; and proposes the repeal of §355.8054, concerning Children's Hospital Reimbursement Methodology, and §355.8055, concerning Reimbursement Methodology for Rural and Certain Other Hospitals.

Background and Justification

These rules describe the reimbursement methodology for inpatient hospital reimbursement. The amendments and repeals are being proposed to comply with the 2014-2015 General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, 83rd Legislature, Regular Session, 2013, HHSC Riders 38, 51, and 71). Specifically these rider sections direct HHSC to:

- rebase rural hospital rates by implementing a facility-specific prospective full cost standard dollar amount (SDA) based on historical costs, trended forward for inflation and limited by a floor and a ceiling. The rider also specifies the definition of a rural hospital and specifies a phase-down for hospitals that met the definition of rural hospital in the previous biennium but no longer meet the definition. (Rider 38)

- expand initiatives to pay more appropriately for outlier payments and to adjust inpatient hospital reimbursement for labor and delivery services provided to adults at children's hospitals. (Rider 51.b.(17) and (19))

- to implement an All Patient Refined Diagnostic Related Group prospective payment system for inpatient services provided by a children's hospital, trended forward for inflation. (Rider 71)

To accomplish these legislative objectives and to achieve the savings directed in the cost containment rider, HHSC proposes the following changes for services provided beginning September 1, 2013:

- Consolidate the inpatient reimbursement methodologies for urban, children's, and rural hospitals under one rule at §355.8052, concerning Inpatient Hospital Reimbursement. To achieve this consolidation, HHSC proposes to repeal §355.8054 concerning Children's Hospital Reimbursement Methodology and §355.8055 concerning Reimbursement Methodology for Rural and Certain Other Hospitals since they are no longer needed. Also, §355.8060 concerning Reimbursement Methodology for Freestanding Psychiatric Facilities is amended to add language regarding the payment of children's freestanding psychiatric facilities in accordance with Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) payment principles. This language is being added because the repeal of §355.8054 concerning

Children's Hospital Reimbursement Methodology will eliminate TEFRA-related language referenced in the rule.

- Section 355.8052 is amended to describe a new SDA methodology for reimbursing children's hospitals using a statewide base SDA with add-ons for geographic wage differences and for teaching medical education; and for reimbursing rural hospitals using a facility-specific SDA limited by a floor and a ceiling. Language was added to describe how new children's and rural facilities will be reimbursed under this new SDA methodology, and the phase down of hospitals located in Rockwall County from rural to urban hospitals.

- Section 355.8052 is also amended to reimburse for labor and delivery services provided to adults at children's hospitals at the same rates used for urban hospitals without add-on rates.

- Section 355.8052 is also amended to reduce all outlier payments by 10 percent except for outlier payments made to children's hospitals.

- Section 355.8052 adds a revised definition of rural hospitals.

- Section 355.8052 is also amended to revise the formula for the determination of the payment of a day outlier or a cost outlier. This revision is intended to ensure that the payment for a day outlier will not exceed the amount of the calculated cost outlier. The proposed rule changes also include other technical corrections, numbering revisions and non-substantive changes to make the rule more readable and understandable.

Section-by-Section Summary

§355.8052 Inpatient Hospital Reimbursement

Removing the previous language from subsection (a) pertaining to the application and general reimbursement method and adding an introduction that is consistent with other reimbursement rules.

Removing obsolete language relating to exceptions from subsection (b).

Adding to subsection (b)(5)(E) state owned teaching hospitals and freestanding psychiatric hospitals as excluded claim types for base year claims.

Removing from subsection (b)(6) the obsolete reference to the TEFRA target cap.

Adding to subsection (b)(7) the definition of a children's hospital.

Removing from subsection (b)(13) the reference to children's hospitals.

Adding to subsection (b)(18) a definition of inflation update factor.

Removing previous subsection (b)(18), interim payment, as it is obsolete.

Removing from subsection (b)(20) an obsolete reference to TEFRA.

Adding to subsection (b)(27) the definition of a rural hospital.

Removing previous subsection (b)(26) to remove references to state owned teaching hospitals that are not needed.

Removing previous subsection (b)(28) as TEFRA target cap is no longer applicable.

Adding to subsection (b)(29) the definition of a teaching medical education add-on.

Adding to subsection (b)(35) the definition of an urban hospital.

Revising subsection (c) to provide clarification of a separate statewide base SDA for children's hospitals and for urban hospitals.

Revising subsection (c)(1)(A) to clarify that the sum of the base year costs is used to calculate the universal mean.

Revising subsection (c)(1)(B) to clarify that hospitals' base year costs are derived from subparagraph (A).

Revising subsection (c)(1)(C) to provide the method for the children's hospital base SDA calculation.

Adding new subsection (c)(1)(D) to provide the methods by which the universal mean is derived for urban hospitals and for children's hospitals.

Revising subsection (c)(2) to add the references for urban hospitals and children's hospitals.

Removing an obsolete reference from subsection (c)(2)(A).

Adding new subsection (d)(1) to specify the conditions in which children's hospitals may receive increases to the base SDA through add-on rates.

Revising subsection (d)(2) to clarify that this subsection applies to urban hospitals.

Revising subsection (d)(3) to provide clarification that the geographic wage add-on is reclassified under Medicare. It also adds teaching medical education as an add-on and provides guidance for the applicability of the add-on for children's hospitals that are new to the Medicaid program and do not have a cost report available.

Revising subsection (d)(4)(A) to add children's hospitals as eligible for a geographic wage add-on.

Adding new subsection (d)(5) to describe eligibility and calculation for a teaching medical education add-on for children's hospitals.

Adding to subsection (d)(6)(A) to clarify that the medical education add-on is for urban hospitals.

Revising subsection (d)(8)(A) to add Medicare teaching hospital designation for children's hospitals as part of the HHSC notification.

Revising subsection (d)(8)(B)(i) to require hospitals to provide documentation of eligibility for a different teaching hospital designation.

Revising subsection (e) to clarify that the final SDA calculation in this section applies to both urban and children's hospitals.

Revising subsection (e)(1)(B) to clarify that the base year claims are calculated in subsection (g)(1) of this section.

Revising subsection (e)(1)(C) to clarify that this subparagraph applies to urban hospitals.

Revising subsection (e)(1)(D) to clarify that this subparagraph applies to urban hospitals.

Adding new subsection (e)(2) to provide the methodology by which a children's hospitals final SDA is calculated.

Moving the methodology for new urban hospitals with no base year claim data from previous (f)(3) to (e)(1)(F).

Moving previous subsection (e)(5), pertaining to adjustments, to subsection (k).

Moving previous subsection (f)(4), pertaining to merged hospitals, to subsection (j).

Adding subsection (f) to provide the final rural hospital SDA methodology to establish a full-cost SDA for each hospital and establishing a floor and a ceiling on the resulting SDAs. Additionally it adds language describing the methodology to phase down Rockwall County from a rural hospital to an urban hospital for calculation of the final SDA.

Revising subsection (g) to clarify when the relative weights, mean length of stay and day outlier thresholds are recalculated, specifies that they are calculated using data from urban and rural hospitals, and apply to all hospitals. Additionally it adds language that specifies that the relative weights that were implemented for urban hospitals on September 1, 2012, will apply to all hospitals until the next rebasing.

Revising subsection (h)(1) to add a reference to subsection (e), relating to the final urban and children's hospitals' SDAs, to the calculation of the payment amount.

Adding to subsection (h)(3)(A)(vii) - (x) language to limit the day outliers at cost and to reduce the day outlier amount to 90 percent.

Adding to subsection (h)(3)(B)(vi) language to reduce the cost outlier payment to 90 percent.

Revising subsection (h)(3)(C) to provide the methodology for final outlier determination.

Adding language to subsection (i)(2) to indicate that information from cost reports is used to calculate interim rates. This paragraph was also amended to delete obsolete references.

Moving previous (f)(5), related to final SDA adjustments, to subsection (k).

Moving previous subsection (i)(3), pertaining to additional data, to subsection (l) and clarifying that failure to provide the data may result in the hospital being placed on vendor hold.

§355.8054 Children's Hospital Reimbursement Methodology

This rule is being repealed.

§355.8055 Reimbursement Methodology for Rural and Certain Other Hospitals

This rule is being repealed.

§355.8060 Reimbursement Methodology for Freestanding Psychiatric Facilities

Revising subsection (a) to provide a general overview.

Revising subsection (b) to remove an obsolete effective date and reword for ease of reading.

Revising subsection (c) to remove an obsolete effective date, remove an obsolete rule reference and to add language to state that children's freestanding psychiatric facilities will be reimbursed under TEFRA methods and procedures.

Adding the word "psychiatric" to subsection (c)(1) to clarify the reimbursement is for a children's psychiatric hospital.

Adding the word "psychiatric" to subsection (c)(2) to clarify that the facility is recognized as a children's psychiatric hospital. Also, replacing the reference to Medicaid Audit Division with a reference to HHSC or its designee.

Adding new subsection (d) to add the TEFRA reimbursement methodology for children's freestanding psychiatric hospitals because the reference in subsection (c) relating to §355.8054 concerning Children's Hospital Reimbursement Methodology which contained the TEFRA reimbursement methodology was deleted due to the rule being repealed.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the rules are in effect there will be a savings to state government general revenue of (\$7,958,189) for state fiscal year (SFY) 2014; (\$8,355,870) for SFY 2015; (\$8,697,585) for SFY 2016; (\$9,044,619) for SFY 2017; and (\$9,405,799) for SFY 2018.

Ms. Rymal does not anticipate there will be any economic cost to persons who are required to comply with the proposed rules during the first five years the rules will be in effect. There may be an adverse fiscal impact on local governments that operate a hospital due to reductions in revenue resulting from the proposed changes. HHSC is unable to estimate the loss in revenue to local governments as a result of administering the rule. The rules will not affect local employment.

Small Business and Micro-Business Impact Analysis

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small or micro-businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

HHSC's research did not identify any hospital in Texas meeting the definition of a small or micro-business.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the rules are in effect, the public benefits expected as a result of enforcing the rules will be compliance with Riders 38, 51, and 71 to ensure that the savings that are required by the riders are achieved, that reimbursement methodologies are revised in accordance with the riders, and that hospital inpatient providers are aware of the changes that will be made to comply with the riders.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore,

does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Rhonda Hites, Senior Hospital Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 13247, Austin, Texas 78711, by fax to (512) 747-7475, or by e-mail to Rhonda.hites@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

1 TAC §355.8052, §355.8060

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8052. *Inpatient Hospital Reimbursement.*

(a) Introduction. The Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service. [Application and general reimbursement method: The Health and Human Services Commission (HHSC) calculates reimbursement for a covered inpatient hospital service, determined in subsection (h) of this section, by multiplying the hospital's final standard dollar amount (SDA), determined in subsection (f) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (g) of this section.]

[(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:]

[(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this division (relating to Children's Hospital Reimbursement Methodology).]

[(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this division (relating to State-Owned Teaching Hospital Reimbursement Methodology).]

[(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8060 of this division (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).]

[(4) Hospitals in counties with 50,000 or fewer persons and certain other hospitals. A hospital in a county with 50,000 or fewer persons based on the 2000 decennial census and certain other hospitals are reimbursed under the methodology described in §355.8055 of this division (relating to Reimbursement Methodology for Rural and Certain Other Hospitals).]

(b) [(e)] Definitions. [When used in this section, and §§355.8054 - 355.8056 of this division, the following words and terms have the following meanings, unless the context clearly indicates otherwise.]

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Add-on--An amount that is added to the base SDA to reflect high-cost functions and services or regional cost differences.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsection (d) of this section, for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--All Medicaid traditional fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by a hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state owned teaching hospitals and freestanding psychiatric hospitals [and hospitals described in subsection (b) of this section].

(6) Base year cost per claim--The cost for a base year claim that would have been paid to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)[; without the application of the TEFRA target cap].

(7) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital.

(8) [(7)] Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) [(8)] Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) [(9)] Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(11) [(10)] Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) [(11)] Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™. All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC.

(13) [(12)] Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary[; or [in the case of children's hospitals, audited by] HHSC.

(14) [(43)] Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) [(44)] Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

(16) [(45)] HHSC--The Texas Health and Human Services Commission or its designee.

(17) [(46)] Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements by provider used by the Centers for Medicare and Medicaid Services (CMS) in calculating the most recent Medicare rates and impacts. The impact file is publicly available on the CMS website.

(18) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(19) [(47)] In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

[(48)] Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).]

(20) [(49)] Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, expressed as a percentage. [The interim rate established during a cost report settlement for a DRG hospital reimbursed under this section and §355.8055 of this division excludes the application of TEFRA target caps and the resulting incentive and penalty payments.]

(21) [(20)] Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG; for each DRG, the average number of days that a patient stays in the hospital.

(22) [(24)] Medical education add-on--An adjustment to the base SDA for an urban [a] teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(23) [(22)] Military hospital--A hospital operated by the armed forces of the United States.

(24) [(23)] Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(25) [(24)] Rebasing--Calculation of the base year cost per claim for each Medicaid inpatient hospital.

(26) [(25)] Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(27) Rural hospital--A hospital in a county with 60,000 or fewer persons based on the 2010 decennial census, a hospital designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC).

[(26)] State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.]

(28) [(27)] Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(29) Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital to reflect higher patient care costs relative to non-teaching children's hospitals.

[(28)] TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to the cost settlement for a hospital reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to patients under age 21.]

(30) [(29)] Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(31) [(30)] Texas provider identifier--A unique number assigned to a provider of Medicaid services in Texas.

(32) [(34)] Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations.

(33) [(32)] Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(34) [(33)] Universal mean--Average base year cost per claim for all hospitals.

(35) Urban hospital--A hospital located in a metropolitan statistical area and not fitting the definition of a rural hospital, children's hospital, state-owned teaching hospital, or freestanding psychiatric hospital.

(c) [(d)] Base urban and children's hospital standard dollar amount (SDA) calculations. HHSC will use the methodologies described in this subsection to determine two separate [a] statewide base SDAs: one for children's hospitals and one for urban hospitals [SDA].

(1) HHSC calculates the universal mean as follows:

(A) Use the sum of the base year costs [cost] per claim for each hospital.

(B) Sum the [dollar] amount for all hospitals' base year costs from subparagraph (A) of this paragraph [per claim].

(C) For children's hospitals subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the universal mean:

(i) for urban hospitals, divide the result from subparagraph (B) of this paragraph by the total number of base year claims; and

(ii) for children's hospitals, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

[(C) Divide the result in subparagraph (B) of this paragraph by the total number of base year claims to derive the universal mean.]

(2) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals and paragraph (1)(C) of this subsection for children's hospitals, HHSC sets aside an amount to recognize high-cost hospital functions, ~~and~~ services, and regional wage differences. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(A) The costs remaining after HHSC sets aside the amount for high-cost hospital functions and services will be used to determine the base SDA⁷ as described in paragraphs (3) and (4) of this subsection].

(B) The costs HHSC sets aside will determine the funds available for distribution to hospitals that are eligible for one or more add-ons as described in subsection (d) [(e)] of this section.

(3) HHSC divides the amount in paragraph (2)(A) of this subsection by the total number of base year claims to derive the base SDA.

(d) [(e)] Add-ons.

(1) A children's hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(B) Teaching medical education add-on, as described in paragraph (5) of this subsection.

(2) [(4)] An urban [A] hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) [(3)] of this subsection.

(B) Medical education add-on, as described in paragraph (6) [(4)] of this subsection.

(C) Trauma add-on, as described in paragraph (7) [(5)] of this subsection.

(3) [(2)] If a hospital becomes eligible for the geographic wage reclassification under Medicare [add-on or the medical education add-on] during the fiscal year, the hospital will become eligible for the adjustment [not receive an increased final SDA. A hospital will become eligible for add-on adjustments for the geographic wage add-on and the medical education add-on] upon next rebasing. If a hospital becomes eligible for the teaching medical education add-on, medical education add-on or trauma add-on during the fiscal year, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of admission occurring on or after the first day of the next state fiscal year. If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(4) [(3)] Geographic wage add-on.

(A) Wage index. To determine a children's or urban hospital's geographic wage add-on, HHSC first calculates a wage index for Texas as follows:

(i) HHSC identifies the Medicare wage index factor for each Core Based Statistical Area (CBSA) in Texas.

(ii) HHSC identifies the lowest Medicare wage index factor in Texas.

(iii) HHSC divides the Medicare wage index factor for each CBSA by the lowest Medicare wage index factor identified in clause (ii) of this subparagraph and subtracts one from each resulting quotient to arrive at a percentage.

(iv) HHSC uses the result of the calculations in clause (iii) of this subparagraph to calculate each CBSA's add-on amount described in subparagraph (C) of this paragraph.

(B) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification, under the process described in paragraph (8) [(6)] of this subsection.

(C) Add-on amount.

(i) HHSC calculates 62 percent of the base SDA to derive the labor-related portion of that rate, consistent with the Medicare labor-related percentage.

(ii) To determine the geographic wage add-on amount for each CBSA, HHSC multiplies the wage index factor determined in subparagraph (A)(iv) of this paragraph for that CBSA by the percentage labor share of the base SDA calculated in clause (i) of this subparagraph.

(5) Teaching medical education add-on.

(A) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in paragraph (8) of this subsection, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(B) Add-on amount. HHSC calculates the teaching medical education add-on amounts as follows:

(i) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(ii) For each children's hospital, sum the amounts identified in clause (i) of this subparagraph to calculate the total medical education cost.

(iii) For each children's hospital, calculate the average medical education cost by dividing the amount from clause (ii) of this subparagraph by the number of cost reports that cross over the base year.

(iv) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(v) For each children's hospital, divide the average medical education cost for the hospital from clause (iii) of this subparagraph by the total average medical education cost for all hospitals from clause (iv) of this subparagraph to calculate a percentage for the hospital.

(vi) Divide the total average medical education cost for all hospitals from clause (iv) of this subparagraph by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(vii) For each children's hospital, multiply the percentage from clause (v) of this subparagraph by the percentage from

clause (vi) of this subparagraph to determine the teaching percentage for the hospital.

(viii) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add on amount.

(6) [(4)] Medical education [Education] add-on.

(A) Eligibility. A teaching hospital that is an urban hospital is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in paragraph (8) [(6)] of this subsection, that HHSC's determination of the hospital's eligibility and Medicare education adjustment factor for the add-on is correct.

(B) Add-on amount. HHSC multiplies the base SDA by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(7) [(5)] Trauma add-on.

(A) Eligibility.

(i) To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services and be eligible to receive an allocation from the trauma facilities and emergency medical services account under Chapter 780, Health and Safety Code.

(ii) HHSC initially uses the trauma level designation associated with the physical address of a hospital's Texas Provider Identifier (TPI). A hospital may request that HHSC, under the process described in paragraph (8) [(6)] of this subsection, use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(B) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(i) by 12.8 percent for hospitals with Level 1 trauma designation;

(ii) by 8.2 percent for hospitals with Level 2 trauma designation;

(iii) by 1.4 percent for hospitals with Level 3 trauma designation; or

(iv) by 0.9 percent for hospitals with Level 4 trauma designation.

(C) Reconciliation with other reimbursement for uncompensated trauma care. Subject to the General Appropriations Act and other applicable law:

(i) If a hospital's allocation from the trauma facilities and emergency medical services account administered under Chapter 780, Health and Safety Code, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals.

(ii) If a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(8) [(6)] Add-on status verification.

(A) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file and the Texas Department of State Health Services' list of trauma-designated hospitals. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, the Medicare teaching hospital designation for children's hospitals, as applicable, and any other related information determined relevant by HHSC. HHSC may post the information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(B) HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification, in writing by regular mail, hand delivery or special mail delivery, from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(i) the hospital provides documentation of its eligibility for a different trauma designation, ~~or~~ medical education percentage, or teaching hospital designation; or

(ii) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA.

(C) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(e) [(f)] Final urban and children's hospital SDA calculations.

(1) HHSC calculates an urban [a] hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) Multiply the SDA determined in subparagraph (A) of this paragraph by the hospital's total relative weight of base year claims as calculated in subsection (g)(1) of this section.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) Multiply the SDA determined for each hospital in subparagraph (A) of this paragraph by the percentage determined in subparagraph (D) of this paragraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(2) HHSC calculates a children's hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults in a children's hospital, the final SDA is equal to the final base SDA for urban hospitals without add-ons.

(C) For new children's hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on.

(D) For state fiscal year 2014 only, HHSC will calculate a blended SDA for children's hospitals, other than those described in subparagraph (C) of this paragraph, as follows:

(i) Calculate a full-cost SDA by dividing the hospital's total base year cost determined in subsection (c)(1)(A) of this section by the number of claims in the base year.

(ii) Multiply the result of clause (i) of this subparagraph by 0.50.

(iii) Multiply the hospital's final base SDA from subparagraph (A) of this paragraph by 0.50.

(iv) Sum the results of the calculations described in clauses (ii) and (iii) of this subparagraph.

(v) The resulting blended SDA determined in clause (iv) of this subparagraph will be adjusted by the inflation update factor from the base year to state fiscal year 2014.

(3) [(2)] For military and out-of-state hospitals, the final SDA is the urban hospital base SDA multiplied by the percentage determined in paragraph (1)(D) of this subsection.

[(3) For hospitals other than those identified in paragraph (2) of this subsection for which HHSC has no base year claim data, the final SDA is the base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in paragraph (1)(D) of this subsection.]

[(4) Merged hospitals.]

[(A) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.]

[(B) HHSC will assign to the merged entity the final SDA assigned to the hospital associated with the surviving Texas Provider Identifier and will reprocess all claims for the merged entity back to the date of the merger or the first day of the fiscal year.]

[(C) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.]

[(5) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this title.]

(f) Final rural hospital SDA calculation.

(1) HHSC calculates a rural hospital's final SDA as follows:

(A) Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subsection (c)(1)(A) of this section, by the number of claims in the base year.

(B) Adjust the result from subparagraph (A) of this paragraph by multiplying the hospital-specific full-cost SDA by the inflation update factor to obtain an adjusted hospital-specific SDA.

(C) Calculate an SDA floor based on 1.5 standard deviations below the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph.

(D) Calculate an SDA ceiling based on 2.0 standard deviations above the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph.

(E) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA floor from subparagraph (C) of this paragraph. If the adjusted hospital-specific SDA is less than the SDA floor, the hospital is assigned the SDA floor amount as the final SDA.

(F) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA ceiling from subparagraph (D) of this paragraph. If the adjusted hospital-specific SDA is more than the SDA ceiling, the hospital is assigned the SDA ceiling amount as the final SDA.

(G) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in subparagraphs (E) and (F) of this paragraph.

(2) HHSC calculates a new rural hospital's final SDA as follows:

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA, calculated by dividing the sum of the SDA amounts from paragraph (1) of this subsection by the number of hospitals in the group.

(B) The mean rural SDA remains in effect until the next rebasing using the steps outlined in paragraph(1)(A) - (G) of this subsection, using the SDA floor and SDA ceiling in effect for the fiscal year.

(3) For hospitals in Rockwall County:

(A) For state fiscal year 2014 only, for each hospital, HHSC will calculate a blended SDA as follows:

(i) Calculate a final SDA as described in paragraph (1) of this subsection;

(ii) Multiply the result of clause (i) of this subparagraph by 0.67;

(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section;

(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.33;

(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.

(B) For state fiscal year 2015 only, for each hospital, HHSC will calculate a blended SDA as follows:

(i) Calculate a final SDA as described in paragraph (1) of this subsection;

(ii) Multiply the result of clause (i) of this subparagraph by 0.33;

(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section;

(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.67;

(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.

(C) For state fiscal year 2016 and thereafter, hospitals in Rockwall County will be classified as urban hospitals and will receive the final SDA as calculated in subsection (e)(1) of this section.

(g) DRG [Diagnosis-related groups (DRGs)] statistical calculations. HHSC recalibrates the relative weights, MLOS [mean length of stay (MLOS)] and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban and rural hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next rebasing.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (c) [(d)] of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics to assign:

(A) a national relative weight recalibrated to a relative weight calculated in paragraph (1) of this subsection; and

(B) an MLOS and a day outlier as described in paragraphs (2) and (3) of this subsection.

(h) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsection (e) or (f) of this section as appropriate by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows:

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination. [If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.]

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in (B)(vi) is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age 21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(i) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing rate years to recalculate base SDAs, to calculate interim rates and to complete cost settlements [for children's hospitals, rural and certain other hospitals, and state-owned teaching hospitals as outlined in §§355.8054 - 355.8056 of this division].

[~~(3) HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC.~~]

(j) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) HHSC will assign to the merged entity the final SDA assigned to the hospital associated with the surviving TPI and will re-

process all claims for the merged entity back to the date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(k) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(l) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

§355.8060. Reimbursement Methodology for Freestanding Psychiatric Facilities.

(a) Introduction. The Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate a per diem reimbursement for covered inpatient hospital services in [The Medicaid reimbursement methodology for] freestanding psychiatric facilities [is set on a per diem rate. The Texas Health and Human Services Commission (HHSC) will establish each facility's eligibility for and amount of reimbursement. This section applies to all freestanding psychiatric facilities].

(b) Reimbursement to freestanding psychiatric facilities. [Effective January 1, 2008,] HHSC or its designee reimburses freestanding psychiatric facilities using a prospective facility-specific per diem rate [; under the prospective payment system, a facility-specific per diem rate]. The per diem rate will be determined based on the Medicare base per diem for inpatient psychiatric facilities with facility-based adjustments for wages, rural location, and length of stay as determined by Medicare, to the extent possible within available funds. HHSC or its designee will not cost settle for services provided to recipients admitted as inpatients to freestanding psychiatric facilities reimbursed under the prospective payment system [on or after the implementation date of the prospective payment system]. The freestanding psychiatric facility inpatient per diem rates are for Medicaid clients under 21 years of age. Per diem rates will be increased only if the Texas Legislature appropriates funds for this specific purpose.

(c) Reimbursement to children's freestanding psychiatric facilities. An [On or after September 1, 2008, an] in-state freestanding psychiatric facility that serves primarily individuals under the age of 21 will be exempt from the freestanding psychiatric facility prospective payment system methodology described in subsection (b) of this section and instead be reimbursed under methods and procedures described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) described in subsection (d) of this section [as an in-state children's hospital as described in §355.8054 of this title (relating to Children's Hospital Reimbursement Methodology)], if the facility meets the following requirements:

(1) After a Medicaid participating freestanding psychiatric facility is recognized by Medicare as a freestanding psychiatric facility, it must request of HHSC or its designee that the facility be reimbursed as a children's psychiatric hospital. The hospital must submit its request on or after September 1, 2008, in writing, to HHSC or its designee's provider enrollment contact and include documentation showing that during the previous two hospital fiscal years, at least 95 percent of the

hospital's total inpatient days were for services to individuals under the age of 21. HHSC will cost settle the annual cost report for the hospital fiscal year in which the request was submitted.

(2) After a freestanding psychiatric facility has been recognized by HHSC as a children's psychiatric hospital, it must annually submit documentation with its annual cost report to HHSC or its designee responsible for receiving submitted cost reports [HHSC's Medicaid Audit Division] for continued recognition as a children's psychiatric hospital. The documentation must show that at least 95 percent of its total inpatient days were for services to individuals under the age of 21. A hospital that does not meet this 95 percent threshold based on its annual cost report will be reimbursed based on the prospective facility-specific per diem rate described in subsection (b) of this section, effective the first day of the hospital fiscal year following the cost reporting period in which the hospital did not meet the 95 percent threshold.

(d) Children's psychiatric hospital TEFRA reimbursement.

(1) HHSC or its designee reimburses in-state children's psychiatric hospitals under methods and procedures described in TEFRA.

(2) Interim payments are determined by multiplying a hospital's charges allowed under Medicaid by the interim rate effective on the date of admission. The interim rate is derived from the hospital's most recent tentative or final Medicaid cost report settlement.

(3) The amount and frequency of interim payments will be subject to the availability of funds appropriated for that purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report.

(4) Cost settlement.

(A) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)).

(B) Notwithstanding the process in subparagraph (A) of this paragraph, HHSC or its designee uses each hospital's final audited cost report, which covers a fiscal year ending during a base year, for calculating the TEFRA target cap for a hospital.

(C) HHSC or its designee selects a new base year period for calculating the TEFRA target cap at least every three years.

(D) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(E) For a newly recognized children's psychiatric hospital, the base year period for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the effective date of recognition. For each cost reporting period after the hospital's base year period, an increase in the TEFRA target cap will be applied as described in subparagraph (D) of this paragraph, until the TEFRA target cap is recalculated in subparagraph (C) of this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.
TRD-201302464

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 424-6900



1 TAC §355.8054, §355.8055

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The repeals affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8054. *Children's Hospital Reimbursement Methodology.*

§355.8055. *Reimbursement Methodology for Rural and Certain Other Hospitals.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302465

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 424-6900



1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8061, concerning Payment for Hospital Services.

Background and Justification

This rule describes the reimbursement methodology for hospital outpatient services. The amendment is proposed to comply with the 2014-2015 General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, 83rd Legislature, Regular Session, 2013, HHSC Rider 51.b.(4) and (5)) to effectively monitor and reduce costs. Specifically these rider sections direct HHSC to: (1) continue to adjust outpatient Medicaid payments to a fee schedule that is a prospective payment system and that maximizes bundling of outpatient services, including hospital imaging rates, and (2) expand efforts to develop more

appropriate emergency department hospital rates for non-emergency related visits.

To accomplish these legislative objectives and to achieve the savings directed in this cost containment rider, HHSC proposes the following changes to reimbursement for outpatient services provided beginning September 1, 2013:

- The reduction of outpatient allowable charges by four percent and the freezing of outpatient interim rates until a fee schedule is implemented that maximizes bundling of outpatient services. The reduction to allowable charges does not apply to children's hospitals, rural hospitals and state-owned hospitals. Children's and rural hospitals are exempt from the reduction in order to assure sufficient access to care and an adequate level of Medicaid funding for services provided to the vulnerable populations those hospitals serve. State-owned hospitals are exempt to avoid an increased cost to the state of providing covered outpatient services.

- HHSC proposes phasing in the reduction to outpatient allowable charges for hospitals in Rockwall County over a two-year period. This transition period is intended to mitigate the impact to those hospitals of the change in designation for Rockwall County from "rural" to "urban" that resulted following the 2010 census.

- The freezing of outpatient interim rates after the implementation of the four percent reduction with exceptions for new hospitals and for adjustments that would result in lower costs to the state.

- The reduction of outpatient hospital imaging rates that are above 125% of Medicaid acute care imaging rates for adults to 125% of Medicaid acute care imaging rates for adults.

- The rule is amended to allow for the determination of non-urgent emergency department payments to be based on a percentage of the Medicaid acute care physician office visit amount for adults. Beginning September 1, 2013, for all hospitals except rural hospitals, non-urgent emergency department services will be reimbursed at 125% of the physician office visit fee for adults. Rural hospitals will continue to have these non-urgent visits reimbursed based on 60% of the percentage of allowable charges for urgent visits to ensure access to these services in rural areas of the State. Hospitals in Rockwall County will be transitioned to the physician office visit fee after the 2014-2015 biennium.

The proposed rule includes other technical corrections, numbering revisions, and non-substantive changes to make the rule more readable and understandable.

Section-by-Section Summary

HHSC proposes amendments to §355.8061 as follows:

Due to the extent of the changes in the outpatient reimbursement methodology, for ease of reading the proposed rule, HHSC deleted the current text in its entirety and replaced it with new text.

- Subsection (a) introduces the rule. HHSC proposes deleting obsolete language from the current version.

- Subsection (b) describes the methodology for calculating interim outpatient reimbursement and for cost-settling hospitals that have not been designated as children's hospitals by Medicare.

- Subsection (b)(1) describes interim reimbursement.

- Subsection (b)(1)(A) describes a high volume provider.

- Subsection (b)(1)(A)(i) describes that, for children's, state-owned, and rural providers that are high volume providers, the percentage of allowable charges is 76.03 percent.
- Subsection (b)(1)(A)(ii) describes the percentage of allowable charges for a Rockwall County high volume provider for state fiscal years 2014-2016.
- Subsection (b)(1)(A)(iii) describes that all other high volume providers the percentage of allowable charges will be at 72.00 percent.
- Subsection (b)(1)(B) describes providers not considered high volume providers.
- Subsection (b)(1)(B)(i) describes that, for children's, state-owned, and rural providers that are not high volume providers, the percentage of allowable charges is 72.27 percent.
- Subsection (b)(1)(B)(ii) describes the percentage of allowable charges for a Rockwall County provider that is not a high volume provider for state fiscal years 2014-2016.
- Subsection (b)(1)(B)(iii) describes that all other providers that are not high volume providers allowable charges will be at 68.44 percent.
- Subsection (b)(1)(C) describes interim reimbursement for outpatient emergency department (ED) services that do not qualify as emergency visits.
- Subsection (b)(1)(C)(i) describes that rural hospitals will receive 60 percent of the percentage of allowable charges for outpatient ED services.
- Subsection (b)(1)(C)(ii) describes the percentage of allowable charges for outpatient ED reimbursement for Rockwall County for state fiscal years 2014-2016.
- Subsection (b)(1)(C)(iii) describes that all other hospitals will receive a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults for outpatient ED services.
- Subsection (b)(2) describes the methodology for determining an outpatient interim rate for each hospital based on allowable outpatient charges derived from the Medicaid cost report.
- Subsection (b)(2)(A) describes the interim rate methodology for a hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013.
- Subsection (b)(2)(B) describes the interim rate methodology for a new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is 50 percent until the interim rate is adjusted.
- Subsection (b)(2)(C) describes the method for calculating interim claim reimbursement by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges.
- Subsection (b)(2)(D) describes cost settlement interim reimbursement. The interim rate is based on the recent tentative or final cost-report settlement. This subsection also provides that HHSC will recoup overpayments determined in the cost-settlement process, but hospitals will not receive additional payments through the cost-settlement process.
- Subsection (c) provides that outpatient non-emergency surgery is reimbursed in accordance with §355.8121, which describes reimbursement for ambulatory surgical centers.

- Subsection (d) describes reimbursement for outpatient hospital imaging, which is based on a percentage of the Medicare fee schedule for similar services, except that if the fee exceeds 125 percent of the Medicaid adult acute care fee for similar services, payment will be reduced to that amount.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amendment is in effect there will be a savings to the state government of (\$24,869,272) for state fiscal year (SFY) 2014, (\$27,547,337) for SFY 2015, (\$30,303,230) for SFY 2016, (\$31,426,994) for SFY 2017, (\$32,582,829) for SFY 2018, and (\$33,882,884) for SFY 2019.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. There may be an adverse fiscal impact on local governments that operate a hospital due to reductions in revenue resulting from the proposed changes. HHSC is unable to estimate the loss in revenue to local governments as a result of administering the rule. The amendment will not affect local employment.

Small Business and Micro-Business Impact Analysis

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small or micro-businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

HHSC's research did not identify any Medicaid hospital in Texas meeting the definition of a small or micro-business.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public benefits expected as a result of enforcing the amendment will be compliance with Rider 51 to ensure that the savings that is required by the rider is achieved and that hospital outpatient providers are aware of the changes that will be made to comply with the rider.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore,

does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Mance Fine, Hospital Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 747-7475; or by e-mail to mance.fine@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8061. Outpatient Hospital Reimbursement [Payment for Hospital Services].

(a) Introduction. The Health and Human Services Commission (HHSC) or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least \$200,000 during calendar year 2004.

(i) For designated children's hospitals, state-owned hospitals, and rural hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent.

(ii) For providers in Rockwall County.

(I) For state fiscal year 2014, the percentage of allowable charges is 74.69 percent.

(II) For state fiscal year 2015, the percentage of allowable charges is 73.34 percent.

(III) For state fiscal year 2016 and thereafter, the percentage of allowable charges is 72.00 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For designated children's hospitals, state-owned hospitals, and rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent.

(ii) For providers in Rockwall County.

(I) For state fiscal year 2014, the percentage of allowable charges is 70.99 percent.

(II) For state fiscal year 2015, the percentage of allowable charges is 69.72 percent.

(III) For state fiscal year 2016 and thereafter, the percentage of allowable charges is 68.44 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, 60 percent of the amount determined in subparagraph (A) or (B) of this paragraph;

(ii) hospitals in Rockwall County:

(I) for state fiscal year 2014 and 2015, 60 percent of the amount determined in subparagraphs (A) or (B) of this paragraph;

(II) for state fiscal year 2016 and thereafter, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults; and

(iii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph

(1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(ii) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(iii) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging. Outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services. If a resulting fee is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

{(a) The Health and Human Services Commission (HHSC) or its designee reimburses hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in this subsection.}

{(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8052 of this division (relating to Inpatient Hospital Reimbursement); §355.8054 of this division (relating to Children's Hospital Reimbursement Methodology); §355.8055 of this division (relating to Reimbursement Methodology for Rural and Certain Other Hospitals); and §355.8056 of this division (relating to State-Owned Teaching Hospital Reimbursement Methodology).}

{(2) Outpatient hospital services reimbursement.}

{(A) HHSC or its designee reimburses outpatient hospital services under a cost-based reimbursement methodology. The amount payable for outpatient hospital services will be determined under similar methods and procedures as those used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as otherwise specified by HHSC.}

{(B) Interim Medicaid reimbursement for outpatient hospital services. Except as described in subparagraphs (E) and (F) of this paragraph, HHSC will reimburse for outpatient hospital services as follows:}

{(i) HHSC will determine a cost-based reimbursement based only on allowable charges, which are charges for covered Medicaid services determined through adjudication.}

{(ii) HHSC will determine a cost-based reimbursement for high-volume providers at 76.03 percent of allowable charges. For the purpose of this section, a high-volume provider is one that was paid at least \$200,000 during calendar year 2004.}

{(iii) HHSC will determine a cost-based reimbursement for the remaining providers at 72.27 percent of allowable charges.}

{(iv) For outpatient emergency department (ED) services that do not qualify as emergency visits, HHSC will reimburse 60 percent of the amount determined in clause (ii) or (iii) of this subparagraph. Services that do not qualify for reimbursement as emergency visits are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website.}

{(v) HHSC will calculate an outpatient interim rate, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's most recent tentative or final Medicaid cost report settlement, as described in subparagraph (C) of this paragraph.}

{(vi) Interim claim reimbursement is determined by multiplying a hospital's outpatient allowable charges resulting from clause (ii) or (iii) of this subparagraph and, if applicable, clause (iv) of this subparagraph, by the outpatient interim rate in effect on the date of service.}

{(C) Cost settlement. Interim claim reimbursement determined in subparagraph (B) of this paragraph will be cost-settled at both tentative and final audit of a hospital's cost report. The calculation of costs will be determined based on the amount of allowable charges determined under subparagraph (B) of this paragraph, including any reductions to allowable charges made under subparagraph (B) of this paragraph.}

{(D) Available funds. The amount and frequency of interim reimbursement will be subject to the availability of funds appropriated for that purpose.}

{(E) Outpatient hospital surgery. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by HHSC or its designee. Outpatient hospital surgery reimbursed under the ASC reimbursement is not subject to cost-based reimbursement and is not included in the outpatient hospital cost settlement.}

{(F) Outpatient hospital imaging. Outpatient hospital imaging services are not reimbursed under the outpatient cost-based reimbursement methodology described in this subsection. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services.}

{(G) Effective date. The reimbursement methodologies described in subparagraphs (B)(iv) and (F) of this paragraph are effective for dates of service on or after September 1, 2011.}

[(b) The direct and indirect costs of caring for charity patients have no relationship to eligible recipients of the Texas Medical Assistance program and are not allowable costs under the Texas Medical Assistance program. Obligations by hospitals to provide free care, under the Hill-Burton Act or any other arrangement as a condition to secure federal grants or loans, are not recognized as a cost under the Texas Medical Assistance program.]

[(c) The contents of subsections (a) and (b) of this section do not describe the amount, duration, or scope of services provided to eligible recipients under the Texas Medical Assistance Program.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302466

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-6900



DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8204

The Texas Health and Human Services Commission (HHSC) proposes new §355.8204, concerning Funding for Waiver Monitoring Program.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare and Medicaid Services (CMS) for the Texas Transformation and Quality Improvement Program, a Section 1115 Waiver. The Delivery System Reform Incentive Payment (DSRIP) program is a supplemental funding program contained in the 1115 Waiver. Through DSRIP, providers gather together in Regional Healthcare Partnerships (RHPs) to propose and implement projects that further HHSC's goal of positive transformation for the state's healthcare system. Providers are given an incentive payment based upon the successful completion of metrics in each DSRIP project.

HHSC and CMS both believe that it is in the public interest to engage in strong and efficient monitoring for both the DSRIP. As a condition of continued supplemental Medicaid payments, CMS required the addition of a monitoring component. HHSC agreed to contract with one or more independent entities to monitor these programs. Two facets of the DSRIP program that an independent entity will monitor are accuracy of DSRIP metric reporting and integrity of intergovernmental transfers (IGTs). Additionally, an independent entity will take part in the ongoing assessment of project metric validity.

The independent entity or entities that will undertake these monitoring responsibilities may be reimbursed through administrative cost claiming procedures allowing a 50/50 match of federal funds. So that it can fund the monitoring, and in recognition that 1115 Waiver participants are receiving large sums, HHSC will use no more than 1% of every IGT submitted for the purpose of a

DSRIP payment to fund the non-federal share of administrative costs claimed by the independent entity. If HHSC determines that any amount of withheld IGT is not necessary to reimburse the independent monitor, the unused portion will be returned on a pro rata basis to all transferring governmental entities.

The proposed new rule describes the amount to be withheld from each IGT submitted for the purpose of a DSRIP payment and the method by which unused funds will be returned to transferring governmental entities.

SECTION-BY-SECTION SUMMARY

Proposed §355.8204(a) provides for an introduction to the new section and explains its purpose.

Proposed §355.8204(b) provides for the method of financing for DSRIP monitoring.

Proposed §355.8204(c) provides for the return of unused funds that were allocated for monitoring.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that for each year of the first five years the proposed rule will be in effect, there is no anticipated net fiscal impact to state government. It is anticipated that there will be a minor fiscal impact to local government, but that impact cannot be quantified.

PUBLIC BENEFITS AND COSTS

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed rule is a strong and independent review of supplemental funding programs contained in the 1115 Waiver.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will not be an economic cost to persons required to comply with the rule as there are no new requirements for providers in the supplemental funding programs contained in the 1115 Waiver.

LOCAL EMPLOYMENT IMPACT

HHSC has determined that the rule will not affect a local economy or local employment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the rule would have no adverse economic effect on small businesses or micro-businesses because any small businesses participating in the 1115 Waiver will gain additional funding.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Charles Greenberg, Assistant General Counsel, Office of General Counsel, Health and Human Services Commission, Mail Code-1070, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 424-6586; or by e-mail to charles.greenberg@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for July 24, 2013, from 1:30 p.m. to 2:30 p.m. (central time) at the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 462-6284.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new rule implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8204. Funding for Waiver Monitoring Program.

(a) Introduction. The Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver provides for supplemental payments to many types of providers. In order to ensure that such payments are made properly, HHSC will contract with one or more independent entities to monitor the supplemental funding programs. This section describes the method by which HHSC will gain the source of the non-federal share of payments to reimburse the independent entity for its administrative expenses.

(b) Funding for Delivery System Reform Incentive Payment program monitoring. Up to 1% from every intergovernmental transfer intended to fund a payment from the DSRIP pool will be allocated to fund DSRIP monitoring activities, not to exceed a total allocation of \$10,000,000 in any demonstration year. Such allocation may be reduced if the total cost of monitoring under this section is less than such allocation.

(c) Return of unused intergovernmental transfers. Any balance of the allocations not used to fund monitoring activities will be returned to the transferring governmental entities on a pro rata basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.
TRD-201302427

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 424-6900

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 23. PUBLICATIONS

13 TAC §23.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Historical Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Historical Commission (hereafter referred to as the "commission") proposes the repeal of 13 TAC §23.1, concerning Publications Costs.

The repeal is proposed to eliminate outdated terminology and procedures and to clarify the process for requests to reprint or copy agency publications.

Mark Wolfe, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of this section.

Mr. Wolfe has also determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of the repeal will be an increased opportunity for the commission to generate revenue to cover agency operating costs. Additionally, Mr. Wolfe has determined there will be no effect on small businesses and individuals.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under §442.005(q) of the Texas Government Code, which provides the commission with the authority to promulgate rules and conditions to reasonably effect the purposes of Chapter 442 of the Texas Government Code.

No other statutes are affected by the repeal of this section.

§23.1. Publications Costs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.
TRD-201302462
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8817

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.315

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.315 "Mega Millions" On-Line Game Rule. The purpose of the proposed amendments is to change the Mega Millions game matrix and the Megaplier add-on game feature, with sales for the changed game beginning on or around October 19, 2013, and the first drawing for the changed game occurring on or around October 22 (subject to change by the executive director and/or the Mega Millions Party Lotteries). Accordingly, at the time of this proposal, the anticipated effective date of these amendments will be October 19, 2013. Specifically, the proposed new matrix will consist of two fields: the first field is a field of seventy-five (75) numbers; and the second field is a field of fifteen (15) numbers. A player must select five numbers from the first field of numbers 1 through 75 and one number from the second field of numbers from 1 through 15 in each play or allow number selection by a random number generator operated by the terminal referred to as Quick Pick. The Megaplier add-on feature allows Mega Millions players--for an additional wager of \$1 per play--to multiply their non-Grand/Jackpot prizes by 2, 3, 4 or 5 times, depending on the multiplier number selected in a random drawing before every Mega Millions drawing. The amendments also change the annual payment option for Grand/Jackpot prizewinners from twenty-six (26) equal annual payments to thirty (30) graduated annual payments as defined in the Mega Millions Finance and Operations Procedures.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there are no foreseeable implications related to cost or revenues to the state as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit is anticipated to be larger jackpots and better overall odds for players, thus creating player excitement with the ultimate goal of generating sales and revenue for the Foundation School Fund. Additionally, players will have the opportunity to participate in a new version of the Megaplier add-on game feature.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Andy Marker, Deputy General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will

hold a public hearing on this proposal at 10:00 a.m. on Wednesday, July 17, 2013, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.315. "Mega Millions" On-Line Game Rule.

(a) Mega Millions. A Texas Lottery on-line game to be known as "Mega Millions" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof, and pursuant to the requirements of the multijurisdictional agreement among all participating party lotteries (the Mega Millions Group). Consistent with this rule, the executive director is specifically authorized to issue all such further instructions and directives as the executive director may deem necessary or prudent, to implement these rules and to comply with the multijurisdictional games. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Mega Millions game is the generation of revenue for party lotteries through the operation of a specially-designed multijurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The estimated annuitized Grand/Jackpot prize amount the Mega Millions directors establish for each Mega Millions drawing. The advertised estimated annuitized grand/jackpot is an amount that would be paid in 30 graduated [26] annual installments as defined in the Mega Millions Finance and Operations Procedures.

(2) Annual payment option--At the time of ticket purchase, a player may select the option for payment of the cash value or annuitized payments of a share of the Grand/Jackpot prize if the play is a winning play. The annual payment option is to be paid in 30 graduated [26] annual payments as defined in the Mega Millions Finance and Operations Procedures, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of this rule. The term "annual payment option" is synonymous with the terms "annual option", "annuitized option", and "annuity option".

(3) Cash value option--At the time of purchasing a ticket, a player may select the option for payment of the cash value or annuitized payments of a share of the jackpot if the play is a winning play. A cash value option will be paid in a single payment of the player's share of the Grand/Jackpot prize amount, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of this rule. The term "cash value option" is synonymous with the terms "cash option" and "net present value option".

(4) If no payment option is selected--[The Commission has just entered into a new lottery operations and services contract, an element of which will be the replacement of retailer and self-service ter-

minals. After the new terminals replace the old terminals, the default payment option, where an option is not chosen by the player, will be the cash value option. During the transition period when there are both old terminals and new terminals in use, the payment options will be as shown in the chart below.] At the time of making a play, a player may select the option for payment of the cash value or annuitized payments of a share of the Grand/Jackpot prize if the play is a winning play. If no selection is made, payment option will be as described in the chart below.

Figure: 16 TAC §401.315(b)(4)

(5) Executive director--The executive director of the Texas Lottery Commission. The term "executive director" is synonymous with the term "director".

(6) Grand/jackpot prize amount--The amount awarded for matching, for one play, all of the numbers drawn from both fields. If more than one player from all participating lottery jurisdictions has selected all of the numbers drawn, the grand/jackpot prize amount shall be divided among those players. The amount actually paid will depend on the payment option elected at the time of purchase, consistent with the provisions of the rule.

(7) Multijurisdictional agreement--The amended and restated multijurisdiction agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the finance and operations procedures for Mega Millions, and on-line drawing procedures for Mega Millions.

(8) Megaplier feature--A Mega Millions game feature, known as "Megaplier", by which a player, for an additional wager of \$1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, for all non-grand/jackpot [the third through ninth tier] prizes, depending on the multiplier number that is drawn prior to the Mega Millions drawing. There is no multiplier for the grand/jackpot prize [or for the second tier prize (the second tier prize is a guaranteed \$1,000,000 prize)].

(9) Number--Any play integer from one through 75 [56].

(10) Party lotteries--One or more of the lotteries established and operated pursuant to the laws of the jurisdictions participating in Mega Millions or any other lottery which becomes a signatory to the Mega Millions agreement.

(11) Play--The six numbers selected on each playboard and printed on the ticket. Five numbers are selected from the first field of 75 [56] numbers and one number is selected from the second field of 15 [46] numbers.

(12) Playboard--Two fields, the first field of 75 [56] numbers and the second field of 15 [46] numbers, each found on the playslip.

(13) Playslip--An optically readable card issued by the commission used by players of Mega Millions to select plays and to elect to participate in the multiplier feature. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Mega Millions play shall be \$1. Multiple draws are available for consecutive draws beginning with the current draw. From time to time, the executive director may authorize the sale of Mega Millions tickets at a discount for promotional purposes. For an additional \$1 per play, a player may purchase the Megaplier feature.

(d) Play for Mega Millions.

(1) Type of play. A Mega Millions player must select five numbers from the first field of numbers from 1 through 75 [56] and an additional one number from the second field of numbers from 1 through 15 [46] in each play or allow number selection by a random number generator operated by the terminal, referred to as Quick Pick.

(2) Method of play. The player may use playslips to make number selections. The terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to issue a ticket. The use of mechanical, electronic, computer generated or any other non-manual method of marking a playslip is prohibited. A player may leave all play selections to a random number generator operated by the terminal, referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Megaplier feature play.

(1) Type of play. A Mega Millions player may elect to participate in the "Megaplier" feature by paying an additional \$1 per play at the time of his/her Mega Millions ticket purchase.

(2) Megaplier drawing. A random drawing will occur before every Mega Millions drawing to determine one multiplier number for that drawing. The multiplier number that will be selected will be either a 2, 3, 4, or 5 [2, 3, or 4]. The multiplier number drawn will be used to multiply the value of all non-grand/jackpot [the] prizes [for the third through ninth tiers]. In the event the multiplier drawing does not occur prior to the Mega Millions drawing, the multiplier number will be a 5 [4].

(3) Multiplier number frequency. The one multiplier number will be selected from a field of numbers according to the following relative frequencies:

Figure: 16 TAC §401.315(e)(3)

(4) Application of multiplier number.

(A) Non-Grand/Jackpot Prizes [Third through ninth tier]. The multiplier number selected is the number that is used to increase the prize amount[;] for all non-grand/jackpot prizes [the third through the ninth tier]. A non-grand/jackpot [third through the ninth tier] prize winner who chose to participate in the Megaplier feature by paying an additional \$1 per play at the time of the player's Mega Millions ticket purchase is paid a prize in the amount of the guaranteed prize amount or the pari-mutuel prize amount, as applicable, multiplied by the multiplier number for that drawing.

(B) Grand/Jackpot Prize. The Megaplier feature does not apply to the grand/jackpot prize.

{(B) Second tier prize. The second tier prize will always be a \$1,000,000 prize, if the player selects and pays for the Megaplier feature (i.e., the multiplier number drawn does not apply to, affect or alter the second tier prize)-}

{(C) Grand/Jackpot Prize. The Megaplier feature does not apply to the grand/jackpot prize-}

(5) Special Megaplier Promotions. The Mega Millions Group may periodically agree to change one or more of the Megaplier multiplier [number for tiers 3 through 9;] numbers in order to conduct special Megaplier promotions during specified time periods. The relative frequency of the Megaplier numbers may be changed and/or

additional numbers may be added to the matrix at the discretion of the Mega Millions Group, from time to time for promotional purposes. [In such promotions the Mega Millions Group may also decide to increase the 2nd tier prize. The Megaplier number will not be applied to the 2nd tier base prize; rather the 2nd tier prize may be increased to a fixed dollar amount to be determined by the group, for any player purchasing the Megaplier Add-on feature during the special promotion.] Such special promotions and [promotion,] matrix changes[, and 2nd tier prize amounts] shall be announced by public notice. Each participating state will announce the promotion according to the laws or customs of the participating state.

(f) Prizes for Mega Millions.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Mega Millions winner who selects matching combinations of numbers, with the exception of the grand/jackpot prize, are guaranteed prizes or pari-mutuel prize amounts in accordance with paragraph (3)(H) of this subsection.

(2) Prize fund. The prize fund for Mega Millions prizes is estimated to be 50% of Mega Millions sales, but may be higher or lower based upon the number of winners at each guaranteed prize level, as well as the funding required to be contributed to the starting advertised annuitized guaranteed grand/jackpot of \$15 million [~~\$42 million~~].

(3) Prize categories.

(A) Matrix of 5/75 [~~5/56~~] and 1/15 [~~1/46~~] with 50 percent estimated prize fund.

Figure: 16 TAC §401.315(f)(3)(A)

(B) Grand/jackpot prize payments.

(i) The portion of the prize money allocated from the current Mega Millions prize fund for the grand/jackpot prize, plus any previous portions of prize money allocated to the grand/jackpot prize category in which no matching tickets were sold and money from any other available source pursuant to a guaranteed or estimated first prize amount announcement will be divided equally among all grand/jackpot prize winners in all participating lotteries matching all five of five Mega Millions winning numbers drawn for field 1 and the one Mega Millions number drawn for field 2. Prior to each drawing, the Mega Millions grand/jackpot prize amount that would be paid in 30 graduated [~~26~~] annual installments, as defined in the Mega Millions Finance and Operations Procedures, will be advertised. The advertised annuitized grand/jackpot prize amount shall be estimated and established based upon sales and the annuity factor established for the drawing. The annuitized grand/jackpot prize to be awarded for each Mega Millions play matching all five (5) of the five (5) Mega Millions winning numbers drawn [~~draw~~] for field one (1) [~~4~~] and the one (1) Mega Millions winning number drawn for field two (2) shall be the amount equivalent to the highest whole \$1 million annuity that is funded by the amount in that portion of the prize fund allocated to the grand/jackpot prize category. In no event, however, shall the annuitized grand/jackpot prize be less than \$15 million [~~\$42 million~~].

(ii) If in any Mega Millions drawing there are no Mega Millions plays which qualify for the grand/jackpot prize category, the portion of the prize fund allocated to such grand/jackpot prize category shall remain in the grand/jackpot prize category and be added to the amount allocated for the grand/jackpot prize category in the next consecutive Mega Millions drawing.

(iii) If there are multiple matching tickets sold of the Mega Millions grand/jackpot prize from among all participating lotteries, then the prize winner(s) in Texas will be paid in accordance with their selection of cash option or annual payment option made at the time of ticket purchase.

(iv) In the event of a prize winner who selects the cash value option, the prize winner's share will be paid in a single payment upon completion of internal validation procedures. The player in Texas must make the election of the cash value option at the time of ticket purchase. [If the player does not make the election at the time of ticket purchase, the share will be paid as if he had selected the cash value option.] The cash value of the grand/jackpot prize will be the amount determined by the highest \$1 million annuity that is funded by the amount of that portion of the prize fund allocated to the grand/jackpot prize category, divided by the annuity factor established for the draw date divided by the number of grand/jackpot prize winners.

(v) Funds for the initial payment of an annuitized option prize or the cash value option prize will be made available to the Texas Lottery from all participating party lotteries as soon as practicable on the business day falling fourteen (14) calendar days after the date of the winning drawing.

(vi) Annual payment option grand/jackpot prizes shall be paid in 30 graduated [~~26~~] annual installments, as defined in the Mega Millions Finance and Operations Procedures, upon completion of internal validation procedures. The initial payment shall be paid upon completion of internal validation procedures. The subsequent 29 [~~25~~] payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. Each payment shall be higher than the previous year's payment, and all payments will be in \$1,000 denominations to facilitate the securities purchase. [All of the twenty-five (25) remaining payments shall be equal and must be in \$1,000 denominations to facilitate the securities purchase.] The full cash equivalent prize shall be awarded to the prize winner[, such that the prize winner receives equal payments in \$1,000 increments for installments 2 through 26, and any residual cash shall be added to the first annual payment. In no event shall the first cash payment exceed the remaining equal installments by more than \$25,000]. The total of all payments [~~the first payment~~], plus the cost of investments, shall equal the total cash equivalent amount in clause (iv) of this subparagraph. All such payments shall be made within seven days of the anniversary of the annual auction date.

(vii) The grand/jackpot prize must be claimed at the Austin claim center regardless of the prize amount.

(C) Non-Grand/jackpot prizes [~~Second through ninth level prizes~~].

(i) Second Prize: Mega Millions plays matching five of the five Mega Millions winning numbers drawn for field 1 (in any order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a second prize of \$1,000,000 [~~\$250,000~~].

(ii) Third Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a third prize of \$5,000 [~~\$10,000~~].

(iii) Fourth Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a fourth prize of \$500 [~~\$150~~].

(iv) Fifth Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a fifth prize of \$50 [~~\$150~~].

(v) Sixth Prize: Mega Millions plays matching three [~~two~~] of the five Mega Millions winning numbers drawn for field 1 (in

any order) and not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a sixth prize of \$5 [~~\$10~~].

(vi) Seventh Prize: Mega Millions plays matching two [~~three~~] of the five Mega Millions winning numbers drawn for field 1 (in any order) and [not matching] the Mega Millions winning number drawn for field 2 shall be entitled to receive a seventh prize of \$5 [~~\$7~~].

(vii) Eighth Prize: Mega Millions plays matching one of the five Mega Millions winning numbers drawn for field 1 and the Mega Millions winning number drawn for field 2 shall be entitled to receive an eighth prize of \$2 [~~\$3~~].

(viii) Ninth Prize: Mega Millions plays matching no numbers of the five Mega Millions winning numbers drawn for field 1, but matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a ninth prize of \$1 [~~\$2~~].

(ix) Each Mega Millions non-Grand/jackpot [~~second through ninth~~] prize shall be paid in one payment.

(D) In a single drawing, a player may win in only one prize category per single Mega Millions play in connection with Mega Millions winning numbers, and shall be entitled only to the highest prize.

(E) For purpose of prize calculation with respect to any Mega Millions pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar.

(F) With respect to the Mega Millions annuitized grand/jackpot prize, the prize amount paid shall be the highest fully funded multiple of one million dollars based solely on the cash option grand/jackpot prize amount as determined by subparagraph (B)(iv) of this paragraph.

(G) Subject to the laws and rules governing each party lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the directors, for promotional purposes. Such change shall be announced by public notice.

(H) Prize liability cap. Notwithstanding any provision in the rule to the contrary, should total prize liability, as defined in the Mega Millions Finance and Operations Procedures, exceed the Liability Cap (as defined in the Mega Millions Finance and Operations Procedures) [(exclusive of grand/jackpot prize carry forward) 300 percent of draw sales or 50 percent of draw sales plus \$50,000,000, whichever is less; (both hereinafter referred to as the "liability cap")], the second and third [~~through fifth~~] prizes shall be paid on a pari-mutuel rather than fixed [~~guaranteed~~] prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the fixed [~~guaranteed~~] prize. The amount to be used for the allocation of such pari-mutuel prizes and related calculations of pari-mutuel prize values [(two through five)] shall be as defined in the Mega Millions Finance and Operations Procedures [~~the liability cap less the amount paid for the grand/jackpot prize and prize levels six through nine~~].

(i) Pari-Mutuel Treatment of Megaplier Prize Levels Two (2) and Three (3) [~~through Five (5)~~]. The expected payout percentage for any Mega Millions Megaplier drawing is 50% of Mega Millions Megaplier sales. However, because Mega Millions Megaplier pays out fixed prizes, the total prize liability will be above or below 50% of sales based on the number of winners at each prize level. If the base prizes awarded for any Mega Millions drawing meet the pari-mutuel criteria of the Mega Millions liability cap, as outlined in the Mega Millions Finance & Operations procedures, then the Megaplier prizes shall be calculated upon the same pari-mutuel basis.

~~[(ii) If the Mega Millions liability cap is exceeded, prize level two (2), normally \$1 million for a Mega Millions ticket sold with the Megaplier option, shall be a reduced amount, said reduction being the same percentage as the base reduced Mega Millions Tier 2 prize level.]~~

~~[(ii) (iii)]~~ Prize levels two (2) and three (3) [~~through five (5)~~] shall be an amount equal to the pari-mutuel prize value multiplied by the Megaplier number selected for that drawing.

(g) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(h) Ticket purchases.

(1) Mega Millions tickets may be purchased in Texas only at a licensed location from a Texas Lottery retailer authorized by the lottery operations director to sell on-line tickets. No Mega Millions ticket purchased outside Texas may be presented to a Texas Lottery retailer for payment within Texas.

(2) Mega Millions tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, election of the Megaplier feature, Megaplier boards played, drawing date, grand/jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed. Neither a party lottery nor its sales agents shall be responsible for lost or stolen tickets.

(4) Except as provided in subsection (d)(2) of this section, Mega Millions tickets must be purchased using official Mega Millions playslips. Playslips which have been mechanically completed are not valid. Mega Millions tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized Texas Lottery retailer's terminal.

(5) In purchasing a ticket issued for Mega Millions, the player agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the party lottery of the state in which the Mega Millions ticket is issued, and by directives and determinations of the director of that party lottery. Additionally, the player shall be bound to all applicable provisions in the Mega Millions Finance and Operations Procedures. The player agrees, as its sole and exclusive remedy, that claims arising out of a Mega Millions ticket can only be pursued against the party lottery of ticket purchase. Litigation, if any, shall only be maintained within the state in which the Mega Millions ticket was purchased and only against the party lottery that issued the ticket. Nothing in this rule shall be construed as a waiver of any defense or claim the Texas Lottery may have in the event a player pursues litigation against the Texas Lottery, its officers, or employees.

(i) Drawings.

(1) The Mega Millions drawings shall be held at the time(s) and location set out in the multijurisdiction agreement.

(2) Each drawing shall determine, at random, the six winning numbers in accordance with the Mega Millions drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the Commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Mega Millions winners for that drawing.

(3) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined immediately prior to a drawing and immediately after the drawing.

(j) Prize winners. The name and city of the winner of the grand/jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference. If a winner claims a Mega Millions grand/jackpot or second prize as a legal entity, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person may be required to be available for appearance at any news conference regarding the prize and may be featured in any party lottery's releases.

(k) Unclaimed Prizes. For [for] winning Mega Millions tickets for which no claim or redemption is made within the specified claim period for each respective party lottery, the corresponding prize monies shall be returned to the other party lotteries in accordance with procedures for the reconciliation of prize liability pursuant to the multijurisdiction agreement and as may be agreed to from time to time by the directors of the party lotteries.

(l) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302414

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 344-5275



16 TAC §401.320

Pursuant to the authority set forth in Texas Government Code §466.015(a), the Texas Lottery Commission Executive Director (Executive Director) proposes amendments to 16 TAC §401.320, "All or Nothing" On-Line Game Rule. The purpose of the proposed amendments is to establish a liability cap of \$5 million for the top prize in the game. Under the existing rule, the top prize is a guaranteed amount of \$250,000. Under the proposed amendments, in any drawing where the number of top prize winners is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and the liability cap of \$5 million will be divided equally by the number of top prize winners. The practice of setting a liability cap is a common lottery industry practice for games that offer fixed prizes.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there are no foreseeable significant implications related to cost or revenues to the state as a result of the proposed amendments. Revenue estimates reflect a slight increase over the original game rule fiscal analysis; however, impact to sales and prize liability from the proposed amendments cannot be quantified with any certainty. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not re-

quired because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit is anticipated to be protection for the State from financial liability by improving the potential variability of the prize payout percentage for the All or Nothing game consistent with the Texas Lottery's mission to generate revenue for education in Texas. Additionally, the proposed rule amendments clearly communicate to players the maximum top prize liability of the game for any one drawing and the pari-mutuel nature of the top prize should this liability limit be reached.

The Executive Director requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 11:00 a.m. on Wednesday, July 17, 2013, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code §466.015, which authorizes the Executive Director to propose rules to be adopted by the Commission and authorizes the Commission to adopt rules governing the operation of the lottery; and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.320. "All or Nothing" On-Line Game Rule.

(a) "All or Nothing." The executive director is authorized to conduct a game known as "All or Nothing." The executive director may issue further directives for the conduct of "All or Nothing" that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Object of the Game. The object of the game is to either select as many or as few numbers that match the 12 numbers drawn in the drawing. If a player matches more than 7 (seven) or fewer than 5 (five) numbers drawn in the drawing, the player wins a prize. (See the prize schedule chart in subsection (g) of this section.) If the player matches all 12 numbers drawn in the drawing, or does not match any numbers drawn in the drawing, the player wins the Top Prize [(\$250,000)]. If more than one ticket has been sold in which a player has matched all or none of the numbers drawn in the drawing, each player possessing such ticket shall win the Top Prize [of \$250,000].

(c) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of twelve different numbers from 1 through 24 for one opportunity to win in "All or Nothing" and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 24 numbers on a playslip for use in selecting numbers for an "All or Nothing" play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more "All or Nothing" plays.

(d) Plays and tickets.

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of an individual play is \$2.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 24 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a playslip to select numbers;

(B) by selecting a Quick Pick and allowing a random number generator operated by the terminal to select numbers; or

(C) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make Quick Pick selections only if the request is made in person. A retailer shall not accept telephone or mail-in or other requests not made in person to manually enter selected numbers.

(8) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) and time(s) for which the plays were purchased, the cost of the ticket and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(9) A playslip, or any document other than a ticket issued as described in paragraph (8) of this subsection, has no monetary value and is not evidence of a play.

(10) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.

(11) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements. Neither the commission nor its sales agents shall be responsible for lost or stolen tickets.

(12) The executive director may authorize promotions in connection with the "All or Nothing" On-Line game. Current promotions will be posted on the commission's web site, and published in the "In Addition" section of the *Texas Register*.

(e) Drawings.

(1) "All or Nothing" drawings will be held four times a day, (at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m.) six days a week (Monday through Saturday). The executive director may change the drawing schedule, if, in the executive director's sole discretion, it is deemed necessary or expedient.

(2) Twelve different numbers from 1 through 24 shall be drawn at each "All or Nothing" drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(f) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(g) Prizes.

(1) The Top Prize [is \$250,000].

(A) Each person who holds a valid ticket for a play matching (in any order) the twelve numbers drawn in a drawing, or matching none of the twelve numbers drawn in a drawing is entitled to a top prize in the amount of \$250,000; provided that, in any drawing where the number of top prize winners is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of \$5 million will be divided equally by the number of top prize winners. For purposes of prize calculation with respect to the pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar. Any part of the top pari-mutuel prize for a drawing that is not paid in prizes (breakage) shall be applied to offset prize expense. All other prizes are in amounts for matching or non-matching selections as shown in the following chart. All prizes are paid in cash.

Figure: 16 TAC §401.320(g)(1)(A)

(B) All payments shall be made upon completion of Commission validation procedures.

(C) A claim for any prize of \$600 or more must be presented at a Texas Lottery claim center.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302511

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 344-5012



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5.31, concerning Registration by Examination. The amendment pertains to registration by examination as a registered interior designer which requires applicants to successfully complete the National Council for Interior Design Qualification ("NCIDQ") examination in order to become a registered interior designer. The proposed amendment would allow an applicant to become registered upon the successful completion of the Architectural Registration Examination ("ARE") or an examination the National Council of Architectural Registration Boards (NCARB) deems equivalent to the ARE, an examination that is a predecessor to the NCIDQ examination, or an examination deemed equivalent by NCIDQ as an alternative to passing the NCIDQ examination. The amendment specifies that passing the ARE may serve as a substitute for the NCIDQ examination if the applicant took the ARE after meeting prerequisites for taking the examination as part of the architectural registration process. The rule implements §1051.351(c-1) as adopted by House Bill 1717 which was passed by the 83rd Legislature. The amendments also strike an obsolete provision that was repealed effective September 1, 2011.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks, also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: there would be greater flexibility for persons to meet the requirements for registration as interior designer. As amended the rule would recognize that passage of the architectural registration examination, as part of the architectural registration process, serves to establish competence and qualification to practice as a registered interior designer. Pursuant to House Bill 1717, those who are currently registered as interior designers but who have not passed an examination mandated by the Board under this rule must pass the test mandated by this rule as it is in effect on January 1, 2017. Those who do not pass the test by September 1, 2017, will be de-listed as registered interior designers. The amendment will serve the public interest in ensuring architects who have passed the architectural registration examination and who are registered as interior designers will be permitted to maintain registration as registered interior designers without passing a different examination. The proposed amendment does not mandate any affirmative action or duty upon any person. To the extent it has an effect upon any registered interior designer, it has a positive fiscal impact in that the amendment makes it unnecessary for certain registered interior designers to successfully complete the NCIDQ examination. The amendment will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1053.154, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which requires the Board to designate an examination as a prerequisite for registration as an interior designer.

The proposed amendment does not affect any other statutes, articles or codes.

§5.31. Registration by Examination.

(a) In order to obtain Interior Design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved Interior Design education and experience and shall successfully complete the Interior Design registration examination or a predecessor or other examination deemed equivalent by NCIDQ as more fully described in Subchapter C of this chapter. Alternatively, an Applicant may obtain Interior Design registration by examination by successfully completing the Architectural Registration Examination or another examination deemed equivalent by NCARB after fulfilling the prerequisites of §1.21 and §1.41 of this title relating to Board approval to take the Architectural Registration Examination for architectural registration by examination. For purposes of this section, an Applicant has "approved Interior Design education" if:

(1) The Applicant graduated from:

(A) a program that has been granted professional status by the Council for Interior Design Accreditation (CIDA) or the National Architectural Accreditation Board (NAAB); [5]

(B) a program that was granted professional status by CIDA or NAAB not later than two years after the Applicant's graduation; [5]

(C) a program that was granted candidacy status by CIDA or NAAB and became accredited by CIDA or NAAB not later than three years after the Applicant's graduation; [5] or

(D) an Interior Design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a CIDA or NAAB accredited professional program;

(2) The Applicant has a doctorate, a master's degree, or a baccalaureate degree in Interior Design;

(3) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from an Interior Design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from a foreign Interior Design program approved or accredited by an agency acceptable to the Board.

(b) In order to obtain Interior Design registration by examination in Texas, an Applicant must also successfully complete the Interior Design Experience Program administered by the National Council for Interior Design Qualification or two years of approved experience as more fully described in Subchapter J of this chapter (relating to Table of Equivalents for Education and Experience in Interior Design).

(c) The Board shall evaluate the education and experience required by subsection (a) of this section in accordance with the Table of Equivalents for Education and Experience in Interior Design.

(d) For purposes of this section, the term "approved Interior Design education" does not include continuing education courses.

(e) An Applicant for Interior Design registration by examination who enrolls in an Interior Design educational program after September 1, 2006, must graduate from a program described in subsection (a)(1) of this section.

[(f) An Applicant who applies for Interior Design registration by examination on or before August 31, 2011 and who commenced his/her Interior Design education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999. This subsection is repealed effective September 1, 2011.]

(f) [(g)] In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302513

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-9040



SUBCHAPTER C. EXAMINATION

22 TAC §5.51

The Texas Board of Architectural Examiners proposes an amendment to §5.51, concerning Requirements. The amendment pertains to requirements for registration by examination as a registered interior designer, including the requirement that applicants successfully complete the National Council for Interior Design Qualification ("NCIDQ") examination in order to become a registered interior designer. The proposed amendment would allow an applicant to become registered upon the successful completion of alternative examinations, including the Architectural Registration Examination ("ARE") or an examination deemed equivalent to the ARE by the examination provider which develops and administers the ARE. In addition, the amendment would allow registration upon passage of an examination that is a predecessor to the NCIDQ examination, or an examination deemed equivalent to the NCIDQ examination. In order for passing the ARE to serve as a substitute for the NCIDQ examination, the applicant must take the ARE after meeting prerequisites for taking it as part of the architectural registration process. The rule implements §1051.351(c-1) as adopted by House Bill 1717 which was passed by the 83rd Legislature.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no signif-

icant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: there would be greater flexibility for persons to meet the requirements for registration as interior designer. As amended the rule would recognize that passage of the architectural registration examination, as part of the architectural registration process, serves as an equivalent examination to establish competence and qualification to practice as a registered interior designer. Pursuant to House Bill 1717, those who are currently registered as interior designers but who have not passed an examination mandated by the Board under this rule must pass the test mandated by this rule as it exists January 1, 2014. Those who do not pass the test by September 1, 2017, will be de-listed as registered interior designers. The amendment will serve the public interest in ensuring architects who have passed the architectural registration examination and who are registered as interior designers will be permitted to maintain registration as registered interior designers.

The proposed amendment does not mandate any affirmative action or duty upon any person. To the extent it has an effect upon any registered interior designer, it has a positive fiscal impact in that the amendment makes it unnecessary for certain registered interior designers (those who have passed the ARE or a comparable examination) to successfully complete the NCIDQ examination. The amendment will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1053.154, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which requires the Board to designate an examination as a prerequisite for registration as an interior designer.

The proposed amendment does not affect any other statutes, articles or codes.

§5.51. Requirements.

(a) An [Every] Applicant for Interior Design registration by examination in Texas must successfully complete all sections of the National Council for Interior Design Qualification (NCIDQ) examination or a predecessor or other examination NCIDQ deems equivalent to the NCIDQ examination. In lieu of successfully completing the NCIDQ examination, an applicant may successfully complete all sections of the Architectural Registration Examination (ARE), or another examination NCARB deems equivalent to the ARE, after fulfilling the requirements of §1.21 and §1.41 of this title relating to Board approval to take the ARE for architectural registration by examination.

(b) The Board may approve an Applicant to take the NCIDQ examination only after the Applicant has completed the educational requirements for Interior Design registration by examination in Texas, has completed at least six (6) months of full-time experience working under the Direct Supervision of a Registered Interior Designer, and has submitted the required application materials. In jurisdictions where interior designers are not licensed, the supervision may be under a licensed architect or a Registered Interior Designer who has passed the NCIDQ examination.

(c) An Applicant may take the NCIDQ examination at any of official NCIDQ testing center but must satisfy all Texas registration requirements in order to obtain Interior Design registration by examination in Texas.

(d) Each Candidate must achieve a passing score in each division of the NCIDQ examination. Scores from individual divisions may not be averaged to achieve a passing score.

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date the examination or portion of the examination was scheduled or intended to be scheduled. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(C) Approval of the request and refund of the fee or portion of the fee by the national examination provider.

(3) An examination fee may not be transferred to a subsequent examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302514

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-9040



CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners proposes an amendment to §7.10, concerning General Fees. The amend-

ment pertains to fees paid to the board. The amendments implement recent changes made by the 83rd Legislature through the passage of HB 1717. The bill amended the statute relating to late charges for failing to timely renew certificates of registration. As amended, the agency is no longer authorized to impose the late charge on the \$200 portion of each renewal fee which is transferred to the General Revenue fund and the Foundation School fund. The amendment replaces the current fee schedule with a more detailed fee schedule which is easier to understand. The replacement schedule lists the occupations fee separately from the remainder of the annual registration renewal fee and implements the Legislature's mandate that the agency assess late charges only upon the portion of the renewal fee that is not transferred to the General Revenue and Foundation School funds. The late fees are recalculated to reflect the lower amounts. The amendments also implement a change in the law which imposes the \$200 supplemental fee to the initial registration of architects. The proposed business registration fees would increase from \$30 to \$45 per year and make corresponding increases upon the late fees for business registrants. The amendment also incorporates a convenience fee upon online transactions to cover the cost to the agency of the third-party contractor to administer online certificate renewals. The amendments delete an obsolete fee for administering the Landscape Architectural Registration Examination and a fee for interior design registration by prior application which is covered by an identical fee for exam application. The agency no longer collects the fee because the examination is administered by third-party contractors and is no longer administered by the board. The amendments also correct a typographical error in the rule so that the word "routing" is corrected.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be that the rule will align with the statute it implements and thus avoid confusion. The rule as amended will cover costs to maintain online registration of individuals and businesses which will ensure a functional on-line means of reliable registration renewal thus ensuring greater customer service. The amendments will have a positive fiscal impact upon individuals who renew certificates of registration late. The late fee for registering 90 or fewer days late would be reduced by \$100 and by \$200 for those who are more than 90 days late. There will be an adverse economic impact upon all individual registrants who renew online to cover an additional \$.25 plus a 2.25% charge for each online transaction. The charge for online transactions is set by the third-party contractor and the fee increase covers the cost of the contractor's fee. The agency also analyzed its cost of maintaining its business registration database, providing online information to consumers on its Web site line regarding registered businesses, and to maintain a robust online business registration process and has determined a fee increase from \$30 to \$45 annually is necessary to cover the costs of these services. The business registration fee increase will have an adverse economic impact upon small and micro-businesses. The agency's current internal database of registered businesses includes roughly 2500 business entities. Nearly all of the businesses which offer or render regulated services are small businesses or micro-businesses. Currently,

there are approximately 750 businesses which have been converted from the internal database to the online business registration database. The agency estimates that its internal database includes some redundant registrations and the registration of businesses that have ceased to exist since registration. The agency estimates that approximately 2000 small and micro-businesses will be adversely affected by the rule change. As the agency increases enforcement of mandatory registration of businesses and continues its conversion to the online business registration, eventually all of these businesses will be charged \$45 per year. The agency considered and, in some cases, implemented the following alternative regulatory requirements: requiring only an initial registration without annual renewals, requiring the identification of businesses where employed upon registration, and maintaining an internal database which is not accessible through the Internet or searchable on the agency's Web site. The agency determined each of the alternative regulations do not fulfill the public policy for business registration. An initial registration without annual renewals has resulted in inaccurate, out-of-date business information, requiring each individual licensee to identify the business where employed results in redundant business data which is not always consistent and often is not updated when the individual moves to another firm. Maintaining an internal roster of registered businesses does not easily and readily provide consumers with information regarding firms which offer or render regulated services. Since one purpose for business registration is to empower consumers to ensure that qualified registrants are actually providing design services on behalf of the firm they are contemplating hiring, lack of an online searchable database significantly undermines the public policy for business registration. Similarly, information about registered businesses is significantly devalued if it is out-of-date and inaccurate. In order to serve the purposes of providing information regarding the licensees who render services on behalf of a firm, as well as discouraging unlicensed individuals from offering unlawful services through a sham firm, it is necessary for the agency to receive, maintain and provide access to a current, accurate and accessible business registration database. The agency has learned that alternative, less costly methods have not been effective. The agency has determined that the \$45 registration fee is the least fiscally burdensome manner to maintain current and accessible information about the firms that offer and render regulated design services.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. A portion of the rule is proposed pursuant to §1051.651(c), Texas Occupations Code, which allows the board to charge a fee, not to exceed 5 percent, to process online payments; §1051.353(b) as amended by HB 1717 which specifies the lower fee paid for late registration renewal; and generally §1051.651, Texas Occupations Code, which allows the board to set a fee to cover the administrative costs of a board action.

The proposed amendment does not affect any other statutes, articles or codes.

§7.10. General Fees.

- (a) (No change.)

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law. Payment of fees through the Internet is an online service provided by Texas.gov, the official Web site of the State of Texas. A person who uses the online service to pay fees must pay an additional \$.25 plus 2.25% of the fee to cover the ongoing operations and enhancements of Texas.gov which is provided by a third party in partnership with the State of Texas.[:]

Figure: 22 TAC §7.10(b)

- (c) - (d) (No change.)

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing [touring], or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

- (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302515

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-9040



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.10

The State Board of Dental Examiners (Board) proposes new §101.10, concerning the Board issuing a temporary license for charitable purposes and to implement requirements of HB 1491 (83rd Legislation, Regular Session). This new rule allows the Board to issue a temporary license for charitable purposes to qualified dentists from other jurisdictions.

Julie Hildebrand, Acting Executive Director, has determined that for the first five-year period the new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Hildebrand has also determined that for the first five-year period the new rule is in effect, the public benefit anticipated as a result of administering the new rule will be to provide the State of Texas with more qualified dentists to participate in charitable events. There is no cost to persons or small businesses who are required to comply with the proposed new rule. There is no foreseeable impact on employment in any regional area where the proposed new rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452,

sarah@tsbde.texas.gov, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed new rule.

§101.10. Temporary License for Charitable Purpose.

(a) In this section, "voluntary charity care" has the meaning assigned by §101.7(c)(1)(A) of this chapter (relating to Retired License Status).

(b) The Board shall grant a temporary license for a dentist who presents proof that the applicant:

(1) Has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist is or has been licensed;

(2) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(3) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(4) Either one of the following:

(A) Is currently licensed in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board; or

(B) Was previously licensed in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board, not more than two years before the date the dentist applies for a license under this section and was licensed in good standing at the time the dentist ceased practicing dentistry.

(c) As part of the application, the applicant shall disclose:

(1) A description of the charity care to be given;

(2) The name, location and contact information of the sponsoring charitable entity;

(3) The specific location and date of the charity care to be provided;

(4) The procedure for continued dental care for patients in compliance with §108.5 of this title (relating to Patient Abandonment);

(5) The procedure for emergency care for patients and reporting to the Board in compliance with §108.6 of this title (relating to Report of Patient Death or Injury Requiring Hospitalization);

(6) The procedure for maintenance of patient records in compliance with §108.8 of this title (relating to Records of the Dentist); and

(7) Any other relevant information regarding the charity care to be given as requested by the Board.

(d) A dentist issued a license under this section shall:

(1) confine the dentist's practice to voluntary charity care;

(2) practice only in a geographic area specified by the license; and

(3) practice only for the period specified by the license.

(e) A dentist issued a license under this section shall maintain the license where the charitable services are provided.

(f) A dentist issued a license under this section shall not administer any form of anesthesia, other than local, without obtaining the proper permit from the Board.

(g) The Board shall take disciplinary action against a dentist licensed under this section for a violation of this section or Board rules in the same manner as against a dentist licensed under Texas Occupations Code, Chapter 256, Subchapter A.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302478

Julie Hildebrand

Acting Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 475-0989



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.6

The Texas State Board of Pharmacy proposes amendments to §281.6, concerning a Mental or Physical Examination. The amendments, if adopted, specify the procedures to follow for a mental or physical examination.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update and clarify the procedures for mental and physical examinations. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as

authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.6. Mental or Physical Examination.

For the purposes of the Act, §§565.001(a)(4), 565.052, 568.003(a)(5), and 568.0036, shall be applied as follows.

(1) (No change.)

(2) Upon a finding of probable cause, as determined by the board or an authorized agent of the board, that the applicant, licensee, or registrant has developed an incapacity that in the estimation of the board would prevent a pharmacist from engaging in the practice of pharmacy or a pharmacy technician or pharmacy technician trainee from practicing with a level of skill and competence that ensures the public health, safety, and welfare, the following is applicable.

(A) The executive director/secretary, legal counsel of the agency, or other representative of the agency as designated by the executive director/secretary, shall request the applicant, licensee, or registrant to submit to a mental or physical examination by a physician or other healthcare professional designated by the board. The individual providing the examination shall be approved by the board. Such examination shall be coordinated through the entity that contracts with the board to aid impaired pharmacists and pharmacy students. The applicant, licensee, or registrant shall: [follow the procedures of such entity for each examination conducted.]

(i) provide the entity with written notice of the appointment at least three days prior to the appointment;

(ii) execute and return to the entity an authorization for release of relevant information on the form required by the entity, within ten days of receipt of request for the release from the entity; and

(iii) follow all other procedures of the entity for each examination.

(B) - (D) (No change.)

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302504

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.22

The Texas State Board of Pharmacy proposes amendments to §281.22, concerning an Informal Disposition of a Contested Case. The amendments, if adopted, correct the citation reference.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to correctly reference the appropriate citation. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.22. Informal Disposition of a Contested Case.

(a) - (d) (No change.)

(e) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice specified in subsection (b) of this section, and upon proof of proper notice to the licensee's or registrant's address of record. For purposes of this section, proper notice means notice sufficient to meet the provisions of §2001.052 [~~§2001.054~~] of the Administrative Procedure Act and §281.30 of this title (relating to Pleadings and Notice in a Contested Case).

(f) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302505

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028



SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.63

The Texas State Board of Pharmacy proposes amendments to §281.63, concerning Considerations for Criminal Offenses. The amendments, if adopted, correct wording.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update the wording. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.63. Considerations for Criminal Offenses.

(a) - (g) (No change.)

(h) In order to establish the factors in subsection (g) of this section, a person with a conviction or deferred adjudication shall:

(1) (No change.)

(2) cooperate with the board by providing the information required by this section, including proof that he or she has:

(A) (No change.)

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment, and a recommendation from the spouse or either ~~other~~ parent;

(C) - (E) (No change.)

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302506

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028



22 TAC §281.66

The Texas State Board of Pharmacy proposes amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. The amendments, if adopted, clarify the reinstatement requirements for individuals with criminal offenses and individuals without criminal offenses.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the requirements for reinstatement. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.66. Application for Reissuance or Removal of Restrictions of a License or Registration.

(a) (No change.)

(b) In reinstatement cases not involving criminal offenses, the ~~[The]~~ board may consider the following items in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

(1) - (14) (No change.)

(c) If reinstatement cases involves criminal offenses, the sanctions specified in §281.64 of this chapter (relating to Sanctions for Criminal Offenses) apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302507

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028



22 TAC §281.67

The Texas State Board of Pharmacy proposes amendments to §281.67, concerning Sanctions for Out-of-State Disciplinary Actions. The amendments, if adopted, correct references.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update and correct references. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.67. Sanctions for Out-of-State Disciplinary Actions.

(a) (No change.)

(b) The sanctions imposed by this chapter [section] can be used in conjunction with other types of disciplinary actions, including administrative penalties, as outlined in this chapter [section].

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302508

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, clarify and update the section to be consistent with other sections of this title and DPS and DEA laws/rules; require documentation of a consultation with a prescriber regarding a prescription; add rules regarding auto-refill programs; and update the rules regarding prescription transfers and specifying that the transfer must be confirmed.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify and update the Class A rules regarding the records of a pharmacy. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to [§291.31 of this title (relating to Definitions); §291.32 of this title (relating to Personnel); §291.33 of this title (relating to Operational Standards); §291.34 of this title (relating to Records); and §291.35 of this title (relating to Official Prescription Requirements); contained in] Community Pharmacy (Class A)) shall be:

(A) - (B) (No change.)

(2) - (3) (No change.)

(4) Records, except when specifically required to be maintained in original or hard copy [hard-copy] form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) - (B) (No change.)

(b) Prescriptions.

(1) (No change.)

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written [Except as noted in clause (ii) of this subparagraph, written] prescription drug orders shall be:

(I) (No change.)

(II) electronically signed by the practitioner using a system that [which] electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) - (-b-) (No change.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedule II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075[, and be manually signed by the practitioner].

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) ~~[(iv)]~~ Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(III) ~~[(v)]~~ The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) (No change.)

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

~~(-a-) - (-b-)~~ (No change.)

~~(-c-)~~ the prescription drug order is not dispensed after the end of the twenty-first ~~[seventh]~~ day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

~~(-a-)~~ the prescription drug order is a ~~[written, oral, or telephonically or electronically communicated prescription, as allowed by the DEA]~~ issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

~~(-b-) - (-c-)~~ (No change.)

(C) (No change.)

(D) Prescription drug orders carried out or signed by an advanced practice nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that ~~[which]~~ is:

(I) - (II) (No change.)

(ii) (No change.)

(E) (No change.)

(3) (No change.)

(4) Electronic prescription drug orders. ~~[For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.]~~

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) ~~[(i)]~~ directly to a pharmacy; or

(II) ~~[(ii)]~~ through the use of a data communication device provided:

~~(-a-)~~ ~~[(i)]~~ the confidential prescription information is not altered during transmission; and

~~(-b-)~~ ~~[(ii)]~~ confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) ~~[(B)]~~ A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) ~~[(C)]~~ Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with the federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations and Texas Department of Public Safety.

(C) ~~[(D)]~~ Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) ~~[(5)]~~ Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(C) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) ~~[(9)]~~ of this subsection relating to accelerated refills.

(D) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(E) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a ~~[on microfilm, microfiche, or other]~~ system that ~~[which]~~ is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) [(6)] Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped and if for a controlled substance, the [address and] DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed numerically and if for a controlled substance:[;]

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic;
or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; [and]

(viii) date of issuance;[-]

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the full name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the full name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code the:

(I) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) address and telephone number of the clinic where the prescription drug order was carried out or signed.

[(B) All original electronic prescription drug orders shall bear:]

[(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;]

[(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;]

[(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;]

[(iv) name and strength of the drug prescribed;]

[(v) quantity prescribed;]

[(vi) directions for use;]

[(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;]

[(viii) date of issuance;]

[(ix) if a faxed prescription, a statement which indicates that the prescription has been faxed (e.g., Faxed to);]

[(x) telephone number of the prescribing practitioner;]

[(xi) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and]

[(xii) if transmitted by a designated agent, the full name of the designated agent;]

[(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:]

[(i) name and address of the patient;]

[(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;]

[(iii) name, original signature, and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;]

[(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;]

[(v) name, strength, and quantity of the drug;]

[(vi) directions for use;]

[(vii) indications for use, if appropriate;]

[(viii) date of issuance; and]

[(ix) number of refills authorized;]

(B) ~~[(D)]~~ At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard copy ~~[hard-copy]~~ prescription or in the pharmacy's data processing system:

- (i) unique identification number of the prescription drug order;
- (ii) initials or identification code of the dispensing pharmacist;
- (iii) initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;
- (iv) quantity dispensed, if different from the quantity prescribed;
- (v) date of dispensing, if different from the date of issuance; and
- (vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(8) ~~[(7)]~~ Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) ~~[(9)]~~ of this subsection relating to accelerated refills.

(ii) ~~[(B)]~~ If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (I) of this section.

(B) ~~[(C)]~~ Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) ~~[(D)]~~ Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) ~~[(E)]~~ Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a

controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that ~~[which]~~ contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) ~~[(F)]~~ Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that [which] contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program.

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patients or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and schedule IV and V controlled substances at the discretion of the pharmacist-in-charge. Schedule II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) [(8)] Records Relating to Dispensing Errors.

[(A) For purposes of this subsection, a dispensing error is defined as an action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.]

[(B)] If a dispensing error occurs, the following is applicable.

(A) [(H)] Original prescription drug orders:

(i) [(H)] shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) [(H)] shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing

tag or label in such a manner as to obliterate the information relating to the error).

(B) [(H)] Prescription drug order records maintained in a data processing system:

(i) [(H)] shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) [(H)] may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) [(H)] if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) [(9)] Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) (No change.)

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that [which] is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) - (5) (No change.)

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) [(b)(5)(D)] of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) (No change.)

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that [which] indicates by patient name the following information:

(I) - (VII) (No change.)

(B) (No change.)

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (I) of this section.

[(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:]

[(A) the transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis;]

[(B) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;]

[(C) the transfer is communicated directly between pharmacists and/or pharmacist interns;]

[(D) both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill;]

[(E) the pharmacist or pharmacist intern transferring the prescription drug order information shall:]

[(i) write the word "void" on the face of the invalidated prescription drug order; and]

[(ii) record on the reverse of the invalidated prescription drug order the following information:]

[(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;]

[(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;]

[(iii) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and]

[(iv) the date of the transfer;]

[(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:]

[(i) write the word "transfer" on the face of the transferred prescription drug order; and]

[(ii) record on the transferred prescription drug order the following information:]

[(i) original date of issuance and date of dispensing or receipt, if different from date of issuance;]

[(ii) original prescription number and the number of refills authorized on the original prescription drug order;]

[(iii) number of valid refills remaining and the date of last refill, if applicable;]

[(iv) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and]

[(v) name of the pharmacist or pharmacist intern transferring the prescription drug order information.]

[(5) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is

making a request for this information as specified in paragraph (4) of this subsection.]

(4) [(6)] Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A [(community)] pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) [(b)(5)(D)] of this section.

(C) Requirements for backup systems.

(i) (No change.)

(ii) Data processing systems shall have a workable (electronic) data retention system that [which] can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) (No change.)

(II) purge the records of dispensing to a printout that [which] contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy [hard-copy] printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) (No change.)

(II) purge the records to a printout that [which] contains all of the information required on the original document.

(iii) (No change.)

(E) (No change.)

(2) Records of dispensing.

(A) (No change.)

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the in-

formation should be clearly documented on the hard copy [~~hard-copy~~] prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy [~~hard-copy~~] printout of all original prescriptions dispensed and refilled. This hard copy [~~hard-copy~~] printout shall contain the following information:

(i) - (viii) (No change.)

(ix) if not immediately retrievable via computer [CRT] display, the following shall also be included on the hard copy [~~hard-copy~~] printout:

(I) - (VI) (No change.)

(x) (No change.)

(D) The daily hard copy [~~hard-copy~~] printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy [~~hard-copy~~] printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy [~~hard-copy~~] printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy [~~hard-copy~~] printout shall be available within 72 hours with a certification by the individual providing the printout, that [~~which~~] states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) (No change.)

(H) The data processing system shall be capable of producing a hard copy [~~hard-copy~~] printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) - (ii) (No change.)

(I) (No change.)

(J) The data processing system shall provide on-line retrieval (via computer [CRT] display or hard copy [~~hard-copy~~] printout) of the information set out in subparagraph (C) of this paragraph of:

(i) - (ii) (No change.)

(K) In the event that a pharmacy that [~~which~~] uses a data processing system experiences system downtime, the following is applicable:

(i) - (ii) (No change.)

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy [~~hard-copy~~] prescription drug order;

(B) on the daily hard copy [~~hard-copy~~] printout; or

(C) via the computer [CRT] display.

[(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:]

[(A) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.]

[(B) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.]

[(C) The transfer is communicated directly between pharmacists and/or pharmacist interns orally by telephone or via facsimile or as authorized in paragraph (5) of this subsection. A transfer completed as authorized in paragraph (5) of this subsection may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.]

[(D) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.]

[(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall ensure the following occurs:]

[(i) the prescription is voided in the data processing system; and]

[(ii) the following information is stored with the invalidated prescription drug order in the data processing system:]

[(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred:]

[(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information:]

[(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and]

[(IV) the date of the transfer.]

[(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall ensure the following occurs:]

[(i) the prescription record indicates the prescription was a transfer; and]

[(ii) the following information is stored with the prescription drug order in the data processing system:]

[(I) original date of issuance and date of dispensing or receipt, if different from date of issuance:]

[(II) original prescription number and the number of refills authorized on the original prescription drug order:]

[(III) number of valid refills remaining and the date of last refill, if applicable:]

{(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and}

{(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.}

{(G) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.}

{(H) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.}

{(I) If the data processing system does not have the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is required to record this information on the original or transferred prescription drug order.}

{(J) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.}

{(5) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.}

{(A) The original prescription is voided and the following information is documented in the records of the transferring pharmacy:}

{(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;}

{(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and}

{(iii) the date of the transfer.}

{(B) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.}

{(C) An electronic transfer between pharmacies may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.}

{(6) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraphs (4) and (5) of this subsection.}

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist; by a pharmacist to a student intern, extended intern, or resident intern; or by a student intern, extended intern, or resident intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall ensure the following occurs:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system; and

(B) the following information is recorded on the reverse of the invalidated prescription drug order or stored with the invalidated prescription drug order in the data processing system:

(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(ii) the name of the individual receiving the prescription drug order information;

(iii) the name of the individual transferring the prescription drug order information; and

(iv) the date of the transfer.

(6) The individual receiving the transferred prescription drug order information shall ensure the following occurs:

(A) write the word "transfer" on the face of the prescription or the prescription record indicates the prescription was a transfer; and

(B) the following information if recorded on the prescription drug order or is stored with the prescription drug order in the data processing system:

(i) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(ii) original prescription number and the number of refills authorized on the original prescription drug order;

(iii) number of valid refills remaining and the date of last refill, if applicable;

(iv) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(v) name of the individual transferring the prescription drug order information.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies using a data processing system shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone.

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(C) If the data processing system does not have the capacity to store all the information required in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order.

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the pharmacies' data processing systems shall store all the information required in paragraphs (5) and (6) of this subsection.

(ii) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records.

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection.

(h) [(g)] Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that [which] indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) [(DEA 222C)] to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) [(DEA 222C)] titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) [(DEA 222C)] at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) [(DEA 222C)] to the Divisional Office of the Drug Enforcement Administration.

(i) [(h)] Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes that [which] will identify each pharmacist, pharmacy technician, and pharmacy technician trainee by name performing data entry of prescription information (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used);

(2) Copy 3 of DEA order form (DEA 222) that [(DEA 222C) which] has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS) the original signed order and all linked records for that order;

(3) a hard copy of the power of attorney to sign DEA 222 [(DEA 222C)] order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard copy [hard-copy] reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy of the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that [which] may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) [(+)] Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, that [which] shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) [(+)] Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that [which] may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document on the hard copy or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if on the information is recorded on the hard copy prescription.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302509

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 305-8028

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13, 98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, and 98.118, concerning the Texas HIV State Pharmacy Assistance Program and the Texas HIV Medication Program.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13, 98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, and 98.118 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to comply with statutory requirements and to effectively operate the program.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §98.2 would add new definitions for the terms "HIV Disease" and "Medicare prescription drug plan" and also would revise the definition for the term "Texas resident." The new definitions are needed to help ensure consistency in the use of these terms across the program. Amendments to the definition of a "Texas resident" are needed in order to clarify that the department may request what information it believes is relevant to help in its residency determinations. The remaining parts of the section are proposed to be renumbered as appropriate, given the proposed substantive changes referenced above.

Proposed amendments to §§98.1, 98.3, 98.5 - 98.7, 98.10, 98.11, and 98.13(a) would clarify that the program would provide assistance for medications covered by Medicare and delete

the reference to "Part D" to clarify that any coverage under a Medicare drug plan is covered under the rule. This amendment is needed because Medicare prescription drug coverage is now offered in a variety of different plans due to the introduction and availability of Medicare managed care plans. The proposed deletion of "Part D" would therefore allow the program to include anyone covered under any Medicare prescription drug plan.

The proposed amendments to §98.5(c) and §98.8(a) and (b) are needed to reflect recent changes in the name of the Branch under which the program resides and reflect changes to the program's mailing address.

Proposed amendments to §98.10(a)(1)(A) would replace "Medicare" with "Social Security Administration" to more accurately reflect the source of Low Income Subsidies.

Proposed amendments to §98.11 would clarify that the department may contract with a claims processor to interface with "plans that provide Medicare prescription drug benefits" and would delete the reference to Medicare "Part D." This amendment is needed because Medicare prescription drug coverage is now offered in a variety of different plans and providers due to the introduction and availability of Medicare managed care plans.

Proposed amendments to §98.12(a) would reflect recent changes in the name of the Branch under which the program resides and also reflect changes to the program's mailing address. Proposed amendments to subsection (b) would reflect recent changes made to the name of the agency Unit and the Branch and corresponding titles for managers who participate in the appeal review panel described in this subsection.

Proposed amendments to §98.13(c) would reflect changes to the department's HIPAA Privacy Officer contact information, including new mailing address, phone numbers and email address.

Proposed amendments to §98.101 would better reflect the statutory role for hospital districts, local health departments, public or nonprofit hospitals and clinics and nonprofit community organizations as described in Health and Safety Code, §85.064(c). Under that provision, these entities may contribute money into the program for the purpose of purchasing medications for patients. This provision has been incorrectly interpreted at times by these other entities to mean that the program could buy medications at special pricing available only to state programs for those entities in this provision and have those entities reimburse the department. The federal Office of Pharmacy Affairs has clarified that state programs cannot purchase medications for other entities and that doing so would be illegal. However, the entities referenced in the statutory provision do benefit indirectly from the program when patients with HIV disease in their respective jurisdictions receive direct assistance from the program, thereby eliminating the need for those entities to provide services to these patients.

Proposed amendments to §98.102 add new definitions for "HIV Disease" and for "Payer of Last Resort." The new definitions are needed to help ensure consistency in the use of these terms across the program. The addition of the term "Payer of Last Resort" is also needed to reflect state law, department policy and federal grant conditions that require the program to be the payer of last resort. Amendments to the definition of a "Texas resident" are needed in order to clarify that the department may request what information it believes is relevant to help in its residency determinations. The remaining parts of the section are proposed to

be renumbered as appropriate, given the proposed substantive changes.

Proposed amendments to §§98.103, 98.110, and 98.118 would update recent changes in the name of the Branch under which the program resides and reflect changes to the program's mailing address.

Proposed amendments to §98.107 would delete language that allows the Director of the Health Promotions Unit to make exceptions to the Medical Eligibility Criteria. This is proposed in order to better meet the statutory requirements of Health and Safety Code, §85.062, regarding eligibility. In addition, federal grant conditions specify that only HIV-positive individuals are eligible for the program and that no exceptions to this criterion can be made.

Proposed amendments to §98.109 would clarify that the program is the payer of last resort and reflect state law, department policy and federal grant conditions that require the program to be the payer of last resort.

Proposed amendments to §98.115(c)(1) would delete language that calls for a specific order of implementing and reversing cost-containment measures. Potential program budget shortfalls as revealed by quarterly actuarial projections may require the need for cost-containment measures. The proposed change in this subsection gives the program and the department greater flexibility to address those shortfalls while attempting to minimize impact to affected patients. Proposed amendments to subsection (c)(2) delete language that calls for reversing cost-containment measures in the order which they were implemented to parallel proposed deleted language in subsection (c)(1). Proposed new language in subsection (c)(2) gives the department greater flexibility to rescind cost-containment measures appropriate to specific circumstances at the time when the measures are implemented.

FISCAL NOTE

Janna Zumbrun, Director, Disease Intervention and Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. The proposed amendments should improve the efficiency of the program's operations and also improve the user-friendliness of the rules for agency stakeholders, and this could have positive fiscal impacts.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

§2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the sections are in effect the public will benefit from adoption of the sections. The public benefit anticipated will be the improved efficiency that comes from improving the clarity and readability of these rules.

PUBLIC COMMENT

Comments on the proposal may be submitted to Juanita Salinas, TB/HIV/STD/Viral Hepatitis Unit, Department of State Health Services, Post Office Box 149347, Mail Code 7909, Austin, Texas 78714-9347, (512) 206-5974 or by email to juanita.salinas@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. TEXAS HIV STATE PHARMACY ASSISTANCE PROGRAM

25 TAC §§98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.013, which requires the department to maximize the use of federal and private funds for HIV-related treatment; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; Health and Safety Code, Chapter 81, which provides authority for agency actions regarding the prevention and control of communicable diseases; and Government Code, §531.0055, and by Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 81, 85, and 1001; and Government Code, Chapter 531.

§98.1. Purpose.

The purpose of this subchapter [chapter] is to establish the Texas HIV State Pharmacy Assistance Program. The program is designed to assist low-income, HIV-infected individuals with out-of-pocket costs associated with the Medicare [Part D] prescription drug plan [plans].

§98.2. Definitions.

The terms, when used in this subchapter, are defined as follows:

(1) AIDS--Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention.

(2) Commissioner--The Commissioner of the Department of State Health Services.

(3) Department--The Department of State Health Services.

(4) HIV--Human immunodeficiency virus, infection as defined by the federal Centers for Disease Control and Prevention.

(5) HIV disease--Encompassing all stages of human immunodeficiency virus (HIV) manifestation from initial infection through end-stage AIDS, including HIV-related conditions and syndromes.

(6) [(5)] Legally responsible person--A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.

(7) Medicare prescription drug plan--A Medicare Part D prescription drug plan or the prescription drug component of a Medicare Part C Advantage plan.

(8) [(6)] Minor--A person who has not reached his or her 18th birthday and who has not been emancipated by a court or who is not married or recognized as an adult by the State of Texas.

(9) [(7)] Program--The Texas HIV State Pharmacy Assistance Program.

(10) [(8)] Out-of-pocket costs--The co-pay, coinsurance and deductible amounts that an individual would be expected to pay when enrolled in a Medicare [Part D] prescription drug plan.

(11) [(9)] Recipient--An individual who, under this subchapter [these sections], is determined by the department to be eligible for services.

(12) [(10)] Texas resident--A person is presumed to be a Texas resident if that person physically resides within the geographic boundaries of the state, with a manifest intent to continue to physically reside within those boundaries. Manifest intent may be evidenced by any information deemed relevant by the department [information], including: voting records; automobile registration; Texas driver's license or other official identification; enrollment of children in a public or private school; or payment of property tax. The burden of proving intent to reside is on the person requesting assistance.

§98.3. Medication Coverage.

The program may only provide assistance with out-of-pocket costs for medications covered by Medicare and on the formulary of the Medicare [Part D] prescription drug plan that an individual is currently enrolled in.

§98.5. General Eligibility Criteria; Renewal.

(a) A person shall meet all of the following requirements to be eligible for the program:

(1) have a diagnosis of HIV disease certified by a physician licensed in the United States;

(2) be a Medicare beneficiary, enrolled in a Medicare [Part D] prescription drug plan, and denied the full low-income subsidy [Part D] assistance by Social Security (information on Medicare eligibility, Medicare [Part D] prescription drug plans and low income subsidy assistance can be found at <http://www.medicare.gov>);

(3) have an adjusted gross income of 200% or less of the current Federal Poverty Guidelines (see <http://www.aspe.hhs.gov/poverty/>);

(4) demonstrated to be a Texas resident as determined within this subchapter, [rule;] and not be:

(A) incarcerated in a city, county, state, or federal jail or prison;

(B) admitted or committed to a state facility under the Texas Health and Safety Code; or

(C) eligible for full assistance with Medicare [Part D] prescription drug plan out-of-pocket costs under any other program; and

(5) submit an application for HIV State Pharmacy Assistance Program benefits.

(b) The department may, at any time, verify the eligibility status of an enrolled recipient to determine if the recipient is continuing to meet the eligibility criteria of the program. The recipient must cooperate with the department, and furnish requested documentation to the department as directed.

(c) A recipient must renew enrollment in the program every two years according to the procedures established by the department. Recipient must demonstrate, at that time, continuing eligibility for the HIV State Pharmacy Assistance Program to the satisfaction of the department. Recipients must use the department's renewal application form (which may be obtained from the department calling toll-free 1-800-255-1090 [1-(800)-255-1090] or writing to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV State Pharmacy Assistance Program, P.O. Box 149347 [1400 West 49th Street], Austin, Texas 78714-3947 [78756-3199]), and comply with all associated deadlines and requirements for accompanying documents.

§98.6. Denial, Non-Renewal, and Termination of Benefits.

A person may be denied enrollment in the program, be denied renewal in the program, and/or have enrollment in the program terminated for any of the following reasons:

(1) failure to maintain Texas residency, or upon demand furnish evidence of such;

(2) failure to continue to meet income requirements for eligibility or to provide income data as requested;

(3) becoming eligible for the Medicare full Low Income Subsidy assistance by the federal Social Security Administration [under Medicare Part D];

(4) becoming incarcerated in a city, county, state, or federal jail or prison;

(5) being admitted or committed to a state facility under the Texas Health and Safety Code;

(6) the department determines the individual has made a material misstatement or misrepresentation on their application or any document required to support their application or renewal, or on submissions made to comply with §98.5(b) of this title (relating to General Eligibility Criteria; Renewal);

(7) failure to continue premium payments under Medicare [Part D];

(8) failure to enroll in Medicare prescription drug plan [Part D benefits] and apply for the Low Income Subsidy under the Medicare Prescription Drug Improvement and Modernization Act of 2003 (information on Medicare enrollment and applying for the Low Income Subsidy can be found at <http://www.medicare.gov>);

(9) failure to notify the program of changes to permanent home address or insurance coverage;

(10) the recipient notifies the program in writing that they no longer want to receive program benefits;

(11) the recipient has not requested or used services during any period of six consecutive months; and/or

(12) program funds are exhausted.

§98.7. Applications.

(a) Persons meeting the aforementioned eligibility requirements must submit a complete application for benefits to the department, on the form specified by the department, accompanied by the required supporting documentation. A complete application shall consist of all of the following:

(1) a complete Application for Services, with the original signature of the applicant, or the person legally responsible for the applicant, certifying that the statements made within the application are factual and true;

(2) documentation of current Texas residency;

(3) documentation acceptable to the department to establish the applicant's financial qualifications;

(4) verification that the applicant has been denied the Medicare [Part D] Full Low Income Subsidy assistance by the federal Social Security Administration;

(5) verification that the applicant has enrolled in a Medicare prescription drug plan [Part D Prescription Drug Plan] that provides prescription services in Texas (Information on enrollment in a Medicare prescription drug plan [Part D Prescription Drug Plan] and the available plans that provide services in Texas can be found at <http://www.medicare.gov>); and

(6) verification that the applicant has a diagnosis of HIV disease and is under the care of a physician licensed to practice in the United States of America, who prescribes drugs for that person.

(b) Any application that does not meet all of the [above] requirements in subsection (a) of this section is considered incomplete. Incomplete applications will not be processed further, and the applicant will be contacted concerning the insufficiency of the application.

§98.8. Application Process.

(a) To request an application packet, call toll-free 1-800-255-1090 [1-(800)-255-1090] or write to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV State Pharmacy Assistance Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [1400 West 49th Street], Austin, Texas 78714-3947 [78756-3199].

(b) Submit completed application, along with accompanying documentation and certification forms, to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV State Pharmacy Assistance Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [1400 West 49th Street], Austin, Texas 78714-3947 [78756-3199].

(c) The applicant is expected to give informed consent to the department so that the program may contact a medical provider, Medicare, or Medicare prescription drug plan to verify information contained in the application and/or to request additional supporting documentation pertaining to the application.

§98.10. Limitations and Benefits Provided.

(a) Benefits payable by the program to recipients are as follows:

(1) Limited Medicare prescription drug plan [Part D] out-of-pocket expenses, which include deductibles, co-pays and co-insurance amounts. To qualify for this benefit, recipients:

(A) cannot be eligible for the full Low Income Subsidy from the Social Security Administration [Medicare], covering full premium, deductible and co-insurance amounts; and

(B) shall apply and be accepted into a [for] Medicare prescription drug plan [Part D benefits].

(2) The program will pay covered services up to a maximum annual allowable amount per recipient, based upon available funds. The annual allowable amount of covered services per recipient is not to exceed the total of the Texas HIV Medications Program's average monthly individual recipient cost for medications times 12 months (as calculated by the department).

(b) The Texas HIV State Pharmacy Assistance Program is the payor of last resort. All available third parties must be billed prior to the program.

(c) If budgetary limitations exist, the department may (at its sole discretion):

(1) restrict or categorize covered services. Categories will be prioritized based upon medical necessity, other third party eligibility and projected third party payments for the different treatment modalities, caseloads, and demands for services. Caseloads and demands for services may be based on current and/or projected data. In the event covered services must be reduced, they will be reduced in a manner that takes into consideration medical necessity and other third party coverage. The department may change covered services by adding or deleting specific services, entire categories or by making changes proportionally across a category or categories, or by a combination of these methods; and/or

(2) establish a waiting list of eligible applicants. Appropriate information will be collected from each applicant who is placed on a waiting list. The information will be used to facilitate contacting the applicant when benefits become available and to allow efficient enrollment application processing should the budgetary limitations loosen.

§98.11. Provision of Service.

The department may contract with a claims processor to interface with plans that provide Medicare prescription drug plans [Part D plans] on behalf of the program.

§98.12. Appeal Procedures and Exceptions.

(a) An applicant whose application for initial benefits (or renewal application) is denied, or whose services have been terminated by the department, may appeal the program's decision. An applicant, recipient or person legally responsible for an applicant or recipient may initiate the appeal process by notifying the department's HIV/STD Prevention and Care [Comprehensive Services] Branch that the person wishes to dispute the program's decision. The written notice must contain all arguments and supporting documents being put forward by the individual in question for the appeal. The notice should be addressed

to the Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV State Pharmacy Assistance Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [4100 West 49th Street], Austin, Texas, 78714-3947 [78756-3199].

(b) A department review panel will hear the appeal. The panel shall consist of the TB/HIV/STD/Viral Hepatitis [Health Promotion] Unit Manager; the HIV/STD Prevention and Care [Comprehensive Services] Branch Manager; the Texas HIV Medication Program Manager, and the Infectious Disease [HIV/STD Comprehensive Services] Medical Officer (or equivalent positions, in the event of an agency reorganization). The appellant may present the case in person before the panel, or rely on the written submissions, but in either event the issues on appeal and the arguments in support of those issues are limited to those already submitted in writing. Following review of the materials, and hearing from the individual in person (if applicable), the panel will issue a written decision. The panel's decision shall be final.

(c) The department is not required to offer an opportunity to dispute the decision to deny, non-renew or terminate if the department's actions are the result of the exhaustion of program funds.

§98.13. Confidentiality.

(a) No information that could identify an individual applicant will be released except as authorized by law and in accord with §1.501 of this title (relating to Privacy of Health Information under the Health Insurance Portability and Accountability Act of 1996). Applicants are advised that, in addition to the department, their physician(s), pharmacist(s), and designated Medicare [Part D] prescription drug plan will be aware of their diagnosis.

(b) The department may use or disclose individual health information to provide, coordinate, or manage health care or related services, as allowed by law. This includes referring the recipient to other health care resources. The department may contact a program applicant or recipient to discuss enrollment benefits, resources for treatment, or other health-related information as appropriate.

(c) An individual may request a copy of the department's privacy notice by writing to: Department of State Health Services, HIPAA Privacy Officer, Mail Code 1915, P.O. Box 149347, [4100 West 49th Street,] Austin, Texas 78714-9347 [78756]; or by telephone at (512) 776-7111 or (888) 963-7111 (toll free); or by email at: privacy.hipaa@dshs.state.tx.us. More information pertaining to the Health Insurance and Portability and Accountability Act (HIPAA [HIPPA]) is available online from the department at [the following URL:]: <http://www.dshs.state.tx.us/hipaa>.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302517

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 776-6972



SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, 98.118

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.013, which requires the department to maximize the use of federal and private funds for HIV-related treatment; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; Health and Safety Code, Chapter 81, which provides authority for agency actions regarding the prevention and control of communicable diseases; and Government Code, §531.0055, and by Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 81, 85, and 1001; and Government Code, Chapter 531.

§98.101. Purpose.

This subchapter establishes procedures and eligibility guidelines for the Texas HIV Medication Program (program) as required in the Health and Safety Code, §85.063. ~~[The program is designed to provide prescription drugs to low-income individuals with HIV disease. Hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations and] HIV-infected individuals may request assistance from the program with obtaining medications which are on the program formulary, used in the treatment of HIV disease.~~

§98.102. Definitions.

These terms, when used in this subchapter, are defined as follows:

- (1) **AIDS**--Acquired immune deficiency syndrome as defined by the federal Centers for Disease Control and Prevention.
- (2) **Council**--The Department of State Health Services Council.
- (3) **Commissioner**--The Commissioner of the Department of State Health Services.
- (4) **Department**--The Department of State Health Services.
- (5) **Eligible Metropolitan Area**--A metropolitan area that is eligible to receive direct federal funding, as defined in federal law at 42 U.S.C. 300ff-17.
- (6) **Executive Commissioner**--The Executive Commissioner of the Health and Human Services Commission.
- (7) **HIV**--Human immunodeficiency virus infection, as defined by the federal Centers for Disease Control and Prevention.
- (8) **HIV disease**--Encompassing all stages of human immunodeficiency virus (HIV) manifestation from initial infection through end-stage AIDS, including HIV-related conditions and syndromes.

(9) ~~[(8)]~~ **Legally responsible person**--A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.

(10) ~~[(9)]~~ **Minor**--A person who has not reached his or her 18th birthday and who has not been emancipated by a court or who is not married or recognized as an adult by the State of Texas.

(11) **Payer of last resort**--In accordance with state law, department policy and corresponding federal grant conditions, program applicants are screened to ensure other source of payment for medication services have been identified and exhausted prior to utilizing program funds, making the program the payer of last resort in terms of eligibility.

(12) ~~[(10)]~~ **Program**--The Texas HIV Medication Program established under the Health and Safety Code, Chapter 85, Subchapter C.

(13) ~~[(11)]~~ **Recipient**--An individual who, under this subchapter [these sections], is determined by the department to be eligible for services.

(14) ~~[(12)]~~ **Texas resident**--A person is presumed to be a Texas resident if that person physically resides within the geographic boundaries of the state, with a manifest intent to continue to physically reside within those boundaries. Manifest intent may be evidenced by any information deemed relevant by the department, [information,] including: voting records; automobile registration; Texas driver's license or other official identification; enrollment of children in a public or private school; or payment of property tax. The burden of proving intent to reside is on the person requesting assistance.

§98.103. Medication Coverage.

(a) The medications provided under the program, and the specific eligibility criteria for them shall be determined by the commissioner, considering the recommendations of the Texas HIV Medication Advisory Committee.

(b) The program will not approve the dispensing of medication(s) in excess of a 30-day supply.

(c) A list of the approved medications and specific eligibility criteria for them may be obtained from the Department of State Health Services, HIV/STD Prevention and Care ~~[Comprehensive Services]~~ Branch, Texas HIV Medication Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347, [1400 West 49th Street,] Austin, Texas 78714-3947 [78756-3199] or on the program's website at: <http://www.dshs.state.tx.us/hivstd/meds/>.

§98.107. Medical Eligibility Criteria.

~~[(a)]~~ A person is medically eligible to participate in the program if the person applying to the program:

- (1) provides evidence that the applicant has a diagnosis of HIV disease from a licensed physician; and
- (2) is under the care of a physician licensed to practice medicine within the United States of America who prescribes the medications for that person.

~~[(b) Exceptions to the Medical Eligibility Criteria can be made at the discretion of the Director of the Health Promotions Unit.]~~

§98.109. Financial Eligibility Criteria.

(a) A person is financially eligible for the program if he or she:

- (1) is not covered for approved program medication(s) under the Texas Medicaid Program, or has exhausted Medicaid pharmacy benefits for the given month;

(2) does not qualify for assistance or receives less than full coverage for approved program medication(s) under any State compensation program or under any other state or federal health benefits program;

(3) meets the program's payer of last resort criteria [~~is not covered under an insurance policy or is otherwise underinsured for prescription drugs~~]; and

(4) has an annual gross income (minus the adjustments described in subsection (b) of this section) that does not exceed 200% of the most recently published federal poverty income guidelines.

(b) Formula for adjusting annual gross income.

(1) An applicant's annual gross income (if single), or the combined annual gross income of the applicant and his or her spouse, minus the program's annualized cost of the prescribed medication(s).

(2) For a minor child, the (combined) annual gross income of the child's parent(s), minus the program's annualized cost of the prescribed medication(s). Only the income of the parent(s) living in the same household as the child at the time of application or recertification will be used to determine financial eligibility.

(3) For an emancipated minor, financial eligibility is determined as set forth in paragraph (1) of this subsection.

(c) The department shall periodically verify the financial status of a recipient to determine if the recipient continues to meet the financial eligibility criteria of the program.

§98.110. Application Process; Verification; Renewal.

(a) Persons meeting the aforementioned eligibility requirements must submit a complete application for benefits to the department, on the form specified by the department, accompanied by the required supporting documentation. A complete application shall consist of all of the following:

(1) a complete Application for Services, with the original signature of the applicant, or the person legally responsible for the applicant, certifying that the statements made within the application are factual and true;

(2) documentation of current Texas residency;

(3) documentation acceptable to the department to establish the applicant's financial qualifications;

(4) verification that the applicant has a diagnosis of HIV disease and is under the care of a physician licensed to practice medicine in the United States of America, who prescribes drugs for that person.

(b) Any application that does not meet all of the [~~above~~] requirements in subsection (a) of this section is considered incomplete. Incomplete applications will not be processed further, and the applicant will be contacted concerning the insufficiency of the application.

(c) To request an application packet, call toll-free 1-800-255-1090 or write to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV Medication Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [1100 West 49th Street], Austin, Texas 78714-9347 [78756-3199]. The program's application for assistance is also available online at [~~the following URL:~~] <http://www.dshs.state.tx.us/hivstd/meds/>.

(d) Submit completed application, along with accompanying documentation and certification forms, to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV Medication Program, Attn: MSJA, Mail Code

1873, P.O. Box 149347 [1100 West 49th Street], Austin, Texas 78714-9347 [78756-3199].

(e) The applicant is expected to give informed consent to the department so that the program may contact a medical provider, Medicare, or Medicare prescription drug plan to verify information contained in the application and/or to request additional supporting documentation pertaining to the application.

(f) The department may, at any time, verify the eligibility status of an enrolled recipient to determine if the recipient is continuing to meet the eligibility criteria of the program. The recipient must cooperate with the department, and furnish requested documentation to the department as directed.

(g) A recipient must renew enrollment in the program every three years according to the procedures established by the department. Recipient must demonstrate, at that time, continuing eligibility for the program to the satisfaction of the department. Recipients must use the department's renewal application form (which may be obtained from the department calling toll-free 1-800-255-1090 or writing to: Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV Medication Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [1100 West 49th Street], Austin, Texas 78714-9347 [78756-3199]), and comply with all associated deadlines and requirements for accompanying documents.

§98.115. Fiscal Planning.

(a) To ensure the program's expenditures do not exceed the program's budget, the department will analyze the latest actuarial projections for the upcoming year, including the average annual cost per recipient and the projected number of recipients the program will be able to serve using current budget figures.

(b) The department will perform this analysis of program expenditures every quarter to determine if funds are sufficient to meet projected expenditures.

(c) To make certain that expenditures do not exceed the program's budget, the department may implement the following temporary cost-containment measures as necessary.

(1) Cost-containment measures [~~may be implemented in the following order~~].

(A) Initiate medical criteria to meet at minimum the most recent federal Department of Health and Human Services Guidelines for the Use of Antiretroviral Agents in HIV-Infected Adults and Adolescents, which can be found at <http://aidsinfo.nih.gov/Guidelines>.

(B) Discontinue using the formula for adjusting the applicant's gross annual income described in §98.109(b) of this title (relating to Financial Eligibility Criteria[~~]~~).

(C) Lower the financial eligibility criteria described in §98.109(a)(4) of this title to a level that is not lower than 125% of federal poverty level.

(D) Cease enrollment of new applicants.

(2) As funds become available, the department will rescind the cost-containment measures in a manner which the department judges most appropriate given the particular circumstances at that time [~~in the reverse order of which they were implemented~~].

(d) Cost-Containment measures, if implemented, will be applied to recipients enrolling after the cost-containment measure(s) is implemented.

§98.118. Appeal Procedures.

(a) An applicant whose application for initial benefits (or renewal application) is denied, or whose services have been terminated by the department, may appeal the program's decision. An applicant, recipient or person legally responsible for an applicant or recipient, may initiate the appeal process by notifying the department's HIV/STD Prevention and Care [Comprehensive Services] Branch that the person wishes to dispute the program's decision. The written notice must contain all arguments and supporting documents being put forward by the individual in question for the appeal. The notice should be addressed to the Department of State Health Services, HIV/STD Prevention and Care [Comprehensive Services] Branch, Texas HIV Medication Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347 [1400 West 49th Street], Austin, Texas, 78714-9347 [78756-3199].

(b) A department review panel will hear the appeal. The panel shall consist of the TB/HIV/STD/Viral Hepatitis [Health Promotion] Unit Manager; the HIV/STD Prevention and Care [Comprehensive Services] Branch Manager; the Texas HIV Medication Program Manager, and the Infectious Disease [HIV/STD Comprehensive Services] Medical Officer (or equivalent positions, in the event of an agency reorganization). The appellant may present the case in person before the panel, or rely on the written submissions, but in either event the issues on appeal and the arguments in support of those issues are limited to those already submitted in writing. Following review of the materials, and hearing from the individual person (if applicable), the panel will issue a written decision. The panel's decision shall be final.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302518

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 776-6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Department proposes an amendment to §51.80, concerning Hunter Education Course and Instructors. The proposed amendment would reorganize the section, stipulate the allowable vehicles for delivery of hunter education instruction, reduce the minimum number of hours of hunter education instruction required for certification, establish a maximum number of hours for skills exercises, establish a new minimum test score for certification, and allow for hunter education instruction to be delivered completely over the Internet to persons 16 years of age and older.

Under current rule, a person over the age of 17 who was born after September 1, 1971, must possess evidence of hunter edu-

cation certification in order to hunt without supervision in Texas. Current rules for hunter education certification require at least 10 hours of instruction (via any combination of home study, classroom, laboratory, field exercises, and live-firing exercises); an evaluation by an instructor that the student is acceptable in attitude, knowledge, and skill; and attainment of a minimum score (depending on the method of instructional delivery) on an examination prescribed by the department.

The proposed amendment to §51.80(a) would eliminate the list of curriculum delivery modes in subsection (a)(1) and place a modernized list of curriculum delivery modes in proposed paragraph (2). The proposed amendment also relocates current subsection (a)(1)(E), which exempts active-duty and honorably discharged veterans of the United States military from any live-fire requirements of hunter education instruction, to subsection (b) for purposes of organizational consistency.

The proposed amendment would create new subsection (a)(2) to set forth the methods of curriculum delivery for hunter education instruction. The current rule allows "any combination" of home study, classroom, laboratory, skills exercises, and live-firing exercises to count as instructional time for the purposes of hunter education certification. Staff has determined that home-study and online delivery are essentially the same thing, that the term "laboratory instruction" is not appropriate, and that the term "skills exercise" may include live-firing exercises. The proposed amendment would specify three options for the delivery of hunter education certification instruction: classroom instruction not to exceed five hours, a combination of online instruction and skills exercise (with the skills exercise portion to be not less than four nor more than five hours in duration), and online-only instruction for persons 16 years of age and older.

As mentioned previously in this preamble, a person must currently, among other things, receive 10 hours of hunter education instruction to be eligible for certification. The proposed amendment reduces the instructional requirement to a maximum of five hours. The 10-hour requirement was established in 1988. The department believes that although the current hunter education curriculum has been demonstrably effective in reducing accidents, injuries, and deaths, this effectiveness is not necessarily due to the 10-hour value and that the current course includes advanced information that is not necessary for basic hunter education certification. The primary purpose of hunter education is to provide hunters with the information they need to hunt safely, legally, and responsibly. Much of the current curriculum consists of information that, though valuable and desirable for hunters to know, is beyond basic knowledge and skills for a beginning hunter; therefore, the proposed amendment would eliminate the 10-hour regulatory requirement and replace it with a requirement of not more than five hours of instruction. Staff has determined that the benefits of hunter education instruction can be obtained with five hours of instruction.

Parks and Wildlife Code, §62.014, requires the department to be responsible for making the hunter education course accessible to those required to take the course. The department currently offers an online hunter education component, but to complete the course a student must participate in a skills component in order to qualify for certification. The department has determined that the prevalence of electronic technologies that make distance learning opportunities possible has reached the point that instructional delivery can take place completely over the Internet. Therefore, the proposed amendment would establish an online-only option for persons 16 years of age and older. Current

rules allow certification for persons nine years of age and older. The online-only option is restricted to persons 16 years of age or older because the department believes that persons over 16 years of age are more likely to understand and retain the course information than are younger persons, and because 16 is the age at which persons are eligible for licensure to operate a motor vehicle, which is a similar activity in terms of inherent safety awareness.

The proposed amendment would also modify subsection (a)(2) to clarify that Hunter Education Instruction can be provided by certified volunteer instructors and by online instruction providers approved by the department. This amendment is necessary to accurately reflect the persons and entities authorized to provide hunter education instruction. Parks and Wildlife Code, §62.014(e), authorizes the department to maximize the use of volunteer instructors, but does not limit the use of other methods of instruction.

The proposed amendment also would add new subsection (a)(7) to clarify that the rules do not prohibit a person from providing or receiving additional hunter education instruction. The department's intent is to continue to support and encourage the advanced and enhanced hunter education courses that are provided often as part of a high school or college level course. The proposed amendment also would eliminate current subsection (a)(2)(B) because there is no longer a Voluntary Hunter Safety Program.

The proposed amendment would reorganize subsection (b) to make its provisions more reader-friendly, add a reference to online instructor approval, and create a new standard for the minimum test score needed for certification. Under the current rule, a hunter education instructor must determine that a hunter education student is acceptable in attitude, knowledge, and skills. Because the proposed amendment would create an online-only option, hunter education students receiving hunter education instruction solely through online delivery cannot be evaluated by the department's classroom providers of hunter education instruction. The department's online hunter education instruction is provided by third-party vendors under contract to the department. The proposed amendment acknowledges that the determination of acceptable attitude, knowledge, and skills for online students of hunter education instruction will not be made in person. The proposed amendment to subsection (b) also would eliminate the current minimum test score values required for certification and replace them with a single minimum score requirement. The current rule specifies a minimum score of 80 percent for hunter education students taking the course online or by home study and 70 percent if the hunter education course was taken in person under supervision of a certified hunter education instructor. The department has determined that there is no reason to base the minimum test score on the method of curriculum delivery and has selected a single value of 75 percent because it is midway between the current test values. The proposed amendment to subsection (b) also would add a new paragraph (5) to reiterate that the online-only hunter education instruction option is restricted to persons 16 years of age and older, for reasons discussed earlier in this preamble. The amendment to subsection (b)(6) would replace "completion" with "certification" for consistency. Finally, new subsection (b)(9) reiterates the exemption from live-firing portions of hunter education instruction for active-duty and honorably discharged veterans of the United States military.

Nancy Herron, Director of Education and Outreach, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Ms. Herron also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be that larger numbers of Texans will be able to participate in hunting activities in Texas and elsewhere.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rule as proposed primarily regulates those individuals who seek to engage in an activity (hunting) that by statute (Parks and Wildlife Code, §62.006 and §62.021) cannot be done on a for-profit basis. Those persons would not be small or micro-businesses.

Another group required to comply with the proposed rule would be hunter education instruction providers, due to the need to adjust course content to conform to the requirements of the proposed rule. However, hunter education classroom instruction and skills exercise instruction is provided by volunteer instructors. Although volunteer instructors are authorized by Parks and Wildlife Code, §62.014(c), to retain a portion of the hunter education fee paid by participants, the retained portion of the fee is only for the purpose of defraying expenses. As a result, volunteers are not engaged in a for-profit enterprise and thus do not qualify as a small or micro-businesses under Government Code, §2006.001(1) or (2).

The proposed rule, if adopted, could result in a reduction in the number of persons participating in classroom instruction and skills exercise. However, as explained above, classroom instruction and skills exercise are provided by volunteer instructors who do not qualify as small or micro-businesses under Government Code, §2006.001(1) or (2).

Providers of online instruction may also be impacted by the proposed rule. However, the impact to providers of online instruction would be positive due to the likelihood of increased numbers of persons obtaining instruction online.

Therefore, no small or micro-businesses will be directly adversely affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed amendment may be submitted to Nancy Herron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4362, e-mail: nancy.herron@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the hunter education program.

The amendment affects Parks and Wildlife Code, Chapter 62.

§51.80. Hunter Education Course and Instructors.

(a) Hunter Education Course.

(1) The Hunter Education Course must ~~[course shall]~~ consist of ~~[at least 10 hours of]~~ instruction ~~including any combination of home study, classroom, laboratory, field exercises and live-firing exercises~~ on the following subjects:

- (A) the safe handling and use of firearms and archery equipment;
- (B) wildlife conservation and management;
- (C) hunting laws and regulations of this state; and
- (D) hunting safety and ethics, including landowners' rights.

~~[(E) A person is exempt from live-firing requirements of this subsection if the person is:]~~

~~[(i) an honorably discharged veteran of the United States armed forces; or]~~

~~[(ii) on active duty as a member of the United States armed forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.]~~

(2) Subject to the restrictions and exceptions contained in this section, the Hunter Education Course required by this section may be delivered via:

- (A) classroom instruction not to exceed five hours;
- (B) a combination of online instruction and skills exercise (skills exercise of not less than four nor more than five hours in duration); or
- (C) online instruction only, for persons 16 years of age or older.

(3) ~~[(2)]~~ The Hunter Education Course required by this section may be provided by: ~~[The department may certify instructors who:]~~

(A) certified volunteer instructors who have successfully completed the department's game warden interview, background investigation, and an instructor training course; or [and]

(B) online instruction providers approved by the department. ~~[are approved to teach the department's Voluntary Hunter Safety Program.]~~

(4) ~~[(3)]~~ The department may decertify instructors for:

(A) violation of provisions of the Parks and Wildlife Code or regulations adopted pursuant to the Code;

(B) falsification of records or documents; or

(C) action that is detrimental to the objective of the program.

(5) ~~[(4)]~~ The department shall provide hunter education opportunities in each county of the state when a substantial number of residents request a class or at least once a year.

(6) ~~[(5)]~~ The department shall issue a certificate to persons who successfully complete the course. A duplicate certificate may be issued upon request to the department's hunter education section or in person to a law enforcement field office or department-approved instruction provider.

(7) Nothing in this section shall be construed to prohibit a person from providing or receiving hunter education instruction in addition to that required by this section.

(b) Hunter Education Requirements.

(1) A person whose date of birth is after September 1, 1971, must successfully complete a Hunter Education Course described in subsection (a) of this section before the person may hunt with firearms or archery equipment in Texas.

(2) A Texas Voluntary Hunter Safety Course successfully completed prior to June 1, 1989, satisfies the mandatory hunter education requirements of this section. ~~[Persons whose date of birth is on or before September 1, 1971, are exempt from the requirements of the Mandatory Hunter Education Program.]~~

~~[(3) Persons who have previously successfully completed the Texas Voluntary Hunter Safety Course in Texas are exempt from the requirements of the Mandatory Hunter Education Program.]~~

(3) ~~[(4)]~~ A person must be at least nine years of age to be certified

(4) ~~[(5)]~~ A Hunter Education Course [The course] is successfully completed when the student:

(A) has fulfilled the instructional requirements of subsection (a)(1) of this section; [attends at least 10 hours of training;]

(B) is evaluated by the instructor or department-approved online instruction provider as acceptable in attitude, knowledge, and skill; and

(C) has taken an examination prescribed by the department and scored a minimum of 75 percent.[:]

~~[(i) 80 points, if the course was taken online or by home study; or]~~

~~[(ii) 70 points, if the course was taken in person under the supervision of a certified hunter education instructor.]~~

(5) The online-only Hunter Education Course is restricted to persons 16 years of age and older.

(6) A person who is required to be certified must possess evidence of certification [completion] while hunting in Texas.

(7) Any individual is encouraged to take the course on a voluntary basis.

(8) A person who is unable to pass the examination as the result of an existing medical condition may, upon authorization from the department, be granted certification.

(9) A person is exempt from live-firing requirements of the Hunter Education Course delivered via classroom instruction or a combination of online instruction and skills exercise if the person is:

(A) an honorably discharged veteran of the United States armed forces; or

(B) on active duty as a member of the United States armed forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302501

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 389-4775



CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department (department) proposes an amendment to §53.50, concerning Training and Certification Fees, to clarify the authorized fees for hunter education instruction.

Current §53.50(b) establishes a \$15 fee for a hunter education course, of which \$10 may be retained by a volunteer instructor. However, the current rule does not address the fee for instruction delivered online. In a proposed amendment to §51.80 published elsewhere in this issue of the *Texas Register*, the department proposes to modernize the delivery of hunter education instruction to include, among other things, an option for online only instruction. Parks and Wildlife Code, §62.014(e), authorizes the department to maximize the use of volunteer instructors, but does not limit the use of other methods of instruction, such as online instruction.

Unlike classroom and skills instruction, which is normally provided by volunteer instructors, online instruction is provided by an online provider approved by the department. The fee for such instruction is established by the online provider, although the department's ability to approve the provider will act as a mechanism to prevent an online provider from charging a fee that is inappropriately high.

The proposed amendment to §53.50(b)(1) would provide that the current fee of \$15 (of which \$10 is retained by the volunteer instructor) is for instruction provided by a volunteer instructor. The proposed amendment to subsection (b)(2) would provide that the fee for online instruction is the fee charged by the online provider approved by the department. Given the rapid development of technology, online providers are faced with the need for ongoing investment to maintain and improve education delivery as

technology changes and improves. Allowing online providers to establish their fees helps ensure that such providers continue to make such investments and offer students the highest quality options for online instruction. In addition, such flexibility should help facilitate competition among online providers which, in turn, should incentivize such providers to offer students better products.

The proposed amendment also would modify the provisions of subsection (b)(3) to eliminate the hunter education course discount for persons who purchase a deferral of hunter education. Currently, §51.80(c) authorizes a person who must otherwise complete hunter education to purchase a one-time hunter education deferral subject to the restrictions set out in that subsection. The deferral allows a person who otherwise would be required to complete a mandatory hunter education course to go hunting under certain conditions during a single specific license year. As noted above, the amendment to §51.80 published elsewhere in this issue of the *Texas Register*, if adopted, would modernize hunter education course delivery and significantly reduce the time commitment required to complete the mandatory hunter course. As a result, although the deferral will continue to be an option, the deferral will no longer be the only efficient method for meeting hunter education requirements.

Currently, the cost to purchase a deferral is \$10. A person who purchases the deferral is entitled to a \$10 discount on the \$15 hunter education course delivered by a volunteer instructor. As a result, a volunteer hunter education instructor who provides instruction to a person who purchased a deferral is only able to recover \$5 to defray costs, rather than \$10 recoverable from other persons. Parks and Wildlife Code, §62.014(e), authorizes the department to "maximize the utilization of volunteer instructors." Similarly, Parks and Wildlife Code, §62.014(i), authorizes the commission to "establish an incentive program to encourage citizens to participate in the program as instructors." Eliminating the discount for purchasers of the deferral will better enable volunteer instructors to defray the costs of teaching hunter education which will encourage continued participation by volunteer instructors.

In addition, as noted above, the proposed amendment to §51.80 published elsewhere in this issue of the *Texas Register* would modernize the delivery of hunter education instruction to include, among other things, an option for online only instruction. Providers of online instruction are allowed more flexibility in establishing fees for hunter education. Providing such flexibility is intended to help ensure continued availability of convenient online instruction. Requiring providers of online instruction to offer a discount to persons who have purchased a hunter education deferral would increase the administrative burden for online instruction providers by necessitating the development of a system to verify eligibility for the discount. Also, since providers of online instruction are provided greater flexibility in fees for hunter education instruction, the discount may not necessarily result in a reduced fee.

Nancy Herron, Director of Education and Outreach, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Ms. Herron also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the rule as proposed will be that larger numbers of Texans will be able to par-

ticipate in hunting activities in Texas and elsewhere and the enhanced availability of hunter education to the general population.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rule as proposed primarily regulates those individuals who seek to engage in an activity (hunting) that by statute (Parks and Wildlife Code, §62.006 and §62.021) cannot be done on a for-profit basis. Those persons would not be small or micro-businesses. Any impact on volunteer hunter education instructors or providers of online hunter education instruction would be a positive impact. Therefore, no small or micro-businesses will be directly adversely affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Nancy Heron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4362 (e-mail: nancy.heron@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the hunter education program and to exempt persons from hunter education requirements, and Parks and Wildlife Code, §42.012 and §42.0141, which authorize the department to adopt rules regarding the fee for resident and nonresident hunting licenses.

The amendment affects Parks and Wildlife Code, Chapters 42 and 62.

§53.50. Training and Certification Fees.

(a) (No change.)

(b) Hunter education fees.

(1) The registration fee for a hunter education course delivered by an approved volunteer instructor is \$15, of which \$10 may be directly retained by a volunteer instructor.

(2) The fee for a hunter education course delivered by an approved online instruction provider shall be established by the online instruction provider.

(3) [(2)] The fee for a deferred hunter education option is \$10[; however, at the time a person who has used a deferred hunter education option chooses to enroll in a hunter education course, that person shall pay a \$5 registration fee to be directly retained by the volunteer instructor].

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302502

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 389-4775

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.72

The Comptroller of Public Accounts proposes an amendment to §3.72, concerning farm machines, timber machines and trailers. The section is proposed with a new title of trailers, farm machines, and timber machines. This section is amended primarily to implement House Bill 268, 82nd Legislature, 2011 and House Bill 3182, 82nd Legislature, 2011. Other amendments to the section reflect reorganization of or changes to existing text for clarity and readability, to provide statements of agency policy, and to provide examples.

Subsection (a) concerns definitions and is reorganized to accommodate new and amended definitions and renumbering. Paragraph (1), concerning bunkhouses, is amended to add clarity and makes no substantive change to the existing definition. Paragraph (2) defines a farm or ranch and is amended for clarity and to provide a statement of agency policy regarding the exclusion of wildlife management and timber operations from the definition. Paragraph (3), concerning farm machines, is amended to improve readability and to provide examples, but makes no substantive change to the existing definition. Paragraph (4) concerning farm trailers is amended to provide a statement of agency policy of excluding trailers designed with living quarters from the definition. Paragraph (5) concerning house trailers is amended to be consistent with §3.481 of this title relating to manufactured homes. Paragraph (6) concerning installation is amended to add clarity and makes no substantive change to the existing definition. Paragraph (7) concerning mobile offices is amended for consistency with §3.306 of this title relating to portable buildings but makes no substantive change to the existing definition. Paragraph (8) is added to define oilfield portable units due to House Bill 3182. New paragraph (9) concerning park models is added for consistency

with §3.481 of this title concerning manufactured homes and for clarification of taxability. New paragraph (10) defining primary use is added to provide a statement of agency policy. Paragraph (11) concerning timber machines is amended for clarity and to provide examples but makes no substantive change to the existing definition. Paragraph (12) concerning timber operations is amended for clarity but makes no substantive change to the existing definition. Paragraph (13) concerning timber trailers is amended for readability and makes no substantive change to the existing definition. Paragraph (14) defining trailers is amended to provide examples as provided in Tax Code, §152.001, and to be consistent with §3.306 of this title relating to portable buildings and §3.88 of this title relating to moveable specialized equipment and makes no substantive change to the existing definition. Paragraph (15) concerning travel trailers is amended for clarity but makes no substantive change to the existing definition.

Subsection (b) concerning loss of identity of a motor vehicle is amended for clarity.

Subsection (c) concerning application of the tax is primarily amended for clarity and is not intended to propose substantive changes. Paragraph (2) is amended to provide a statement of agency policy that the use of a farm trailer for transportation to events such as competitions and shows is not an exempt use. New paragraph (5) establishes the taxability of an oil-field portable unit that is no longer used as an oil-field portable unit and its resulting taxability.

New subsection (d) concerns claiming agricultural and timber exemption as provided for in House Bill 268. Paragraph (1) explains that all eligible persons claiming exemption must apply to the comptroller for a Texas Agricultural and Timber Exemption Registration Number and provide that number when claiming the exemption. Paragraph (2) provides information on the documentation that a seller must obtain on the sale or rental of an exempt unit. Paragraph (3) concerns record retention requirements.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the taxability of trailers, farm machines, and timber machines under certain state taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 and Tax Code, §152.003, which provides the comptroller with the authority to prescribe and adopt rules relating to the administration of Tax Code, Chapter 152.

The amendment implements Tax Code, §§152.001(4)(G) (excluding oilfield portable units from the definition of a motor vehicle), 152.001(20) (defining an oilfield portable unit) and 152.091(b-1) (claiming the agricultural/timber exemption).

§3.72. *Trailers, Farm Machines, and Timber Machines [and Trailers].*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.[:]

(1) Bunkhouse--A house trailer designed to be used as [a] sleeping accommodations [place] for multiple persons, such as a work crew, [a group of or crew] but not as a single-family [single family] residence.

(2) Farm or ranch--One or more tracts of land used, either wholly or in part, in the production of [to produce] crops, livestock, and/or other agricultural products held for sale [to be sold] in the regular course of business. The term [Farm or ranch also] includes feed lots, [a] dairy farms, poultry farms [farm], commercial orchards [orchard], commercial nurseries [greenhouse, feedlot], and [any] similar commercial agricultural operations [operation] that are [is an] original producers [produceer] of agricultural products. The term does not include, among other operations, home [Home] gardens, wildlife management, and timber operations [are not considered farms or ranches].

(3) Farm machine--A self-propelled motor vehicle specially adapted for, and whose primary use is in, the production of crops or rearing of livestock, including poultry[:] or [for] use in feedlots. The term [and] includes a self-propelled motor vehicle specially adapted for distributing and applying plant-food [plant food] materials, agricultural chemicals, or feed for livestock. The term [Farm machine] does not include pickup trucks or any self-propelled motor vehicle specifically designed, or specially adapted, to transport property other than the property being applied or for the sole purpose of transporting or setting in place agricultural products, plant-food [plant food] materials, agricultural chemicals, or feed for livestock. Examples of farm machines include, but are not limited to, a truck cab chassis with a tank and equipment designed to apply liquid fertilizer, a truck cab chassis with a hopper and auger designed to distribute feed in a feedlot, and a truck modified with a flat bed, feed distributor, and hay bale roll-out distribution device. A flat bed truck modified solely with a hay spear/spike, hay bale roll-out distribution device, or cube feeder of a size allowing the truck bed to be used for general purposes is an example of a vehicle that does not qualify as a farm machine.

(4) Farm trailer--A trailer or semitrailer designed and whose primary use is [used primarily] as a farm or ranch vehicle. The term does not include a motor vehicle designed for human habitation, including, but not limited to, any vehicle designed for sleeping, dressing, lounging, restroom use, or meal preparation, even though the vehicle may also be used to transport livestock or agricultural products.

(5) House trailer--This term has the meaning given in §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax) referring to Subchapter T of this chapter (relating to Manufactured Housing Sales and Use Tax). [A trailer designed for human habitation.]

(6) Installation or set-up--Activities associated with the sale of a trailer, as defined in this section, including, but not limited to, spotting the trailer; preparing the foundation; [charges--Include charges for spotting,] placing, leveling, blocking, and anchoring the trailer[:; and] connecting sewer, water, electricity, [plumbing,] and other utilities[:;] and [may include a charge for] installing under skirting [underskirting], awnings, and steps.

~~[(7) Its own structure--The trailer is built on a permanent chassis with wheels, axles and a towing device.]~~

(7) ~~[(8)]~~ Mobile office--A trailer designed to be used as an office, sales outlet, or workplace ~~[work place]~~. See §3.306 of this title (relating to Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes).

(8) Oilfield portable unit--The term means a self-contained transportable structure built on a permanent chassis, with or without wheels, axles, and a towing device, designed to be used for temporary lodging or as temporary office space that:

(A) does not require attachment to a foundation or to real property to be functional;

(B) is located exclusively upon, or immediately adjacent to, the lease premises or assigned acreage of an oil, gas, water disposal, or injection well located within an oil or gas lease, field, pooled unit, or unitized tract;

(C) is exclusively used to provide sleeping accommodations, temporary office space, or any other temporary work space for employees, contractors, or other workers at an oil, gas, water disposal, or injection well; and

(D) does not include a travel trailer, camper trailer, or recreational vehicle but may include, a bunkhouse, trailer, semitrailer, park model, house trailer, and manufactured home or similar unit.

(9) Park model--This term has the meaning given in §3.481 of this title.

(10) Primary use--Use of at least 80% of a motor vehicle's operating time.

(11) ~~[(9)]~~ Timber machine--A self-propelled motor vehicle specially adapted to perform a specialized function for use primarily in timber operations, such as land preparation, planting, maintenance, and harvesting of trees. The term ~~[Timber machine]~~ does not include any self-propelled motor vehicle specifically designed or adapted for the primary use ~~[purpose]~~ of transporting timber or timber products, including a self-propelled motor vehicle designed to transport cargo and adapted with a cargo-loading ~~[cargo loading]~~ device. The definition also does not include field service vehicles, such as those used to fuel or maintain other vehicles or crew vehicles.

(12) ~~[(10)]~~ Timber operations ~~[operation]~~--The production of timber, meaning the activities to prepare the production site or to plant, cultivate, or harvest commercial timber that will be sold in the regular course of business ~~[including land preparation, planting, maintenance, and gathering of trees commonly grown for commercial timber]~~.

(13) ~~[(11)]~~ Timber trailer--A trailer ~~[or semitrailer]~~ designed for and used primarily in a timber operation.

(14) ~~[(12)]~~ Trailer--A vehicle without automotive power that is designed for human habitation or for carrying property upon a permanent chassis with wheels, axles, and a towing device, and that is designed ~~[its own structure and]~~ to be drawn by a self-propelled motor vehicle. The term includes, but is not limited to, ~~[Included in this definition are]~~ semitrailers, vans, flatbeds, tanks, dumpsters, trailers sold unassembled in a kit ~~[bunkhouses]~~, dollies, jeeps, stingers, auxiliary axles, converter gears, bunkhouses, travel trailers, park models, and house trailers. The term ~~[This definition]~~ does not include a unit designed to be towed by a self-propelled vehicle that meets the definition of moveable specialized equipment in §3.88 of this title (relating to Moveable Specialized Equipment and Off-Road Vehicles); mobile offices, as defined in this section;~~;~~ manufactured homes, ~~[housing]~~

as defined by Tax Code, §158.002; oilfield portable units, as defined in this section; ~~[in the Texas Manufactured Housing Standards Act (Texas Civil Statutes, Article 5224f);]~~ or portable buildings, ~~[and]~~ prefabricated buildings, and ready-built homes, as defined in §3.306 of this title ~~[(relating to Sales of Portable Buildings, Prefabricated Buildings, and Readybuilt Homes)]~~.

(15) ~~[(13)]~~ Travel trailer or recreational trailer ~~[park model]~~--A ~~[house]~~ trailer designed for human habitation as temporary living quarters in connection with recreational, camping, travel, or seasonal use that:

(A) is not designed to be used as a permanent dwelling; ~~[and that]~~

(B) is less than eight body feet in width and 40 body feet in length in the traveling mode and contains plumbing, heating, and electrical systems that may be operated without connection to outside utilities; and ~~[and less than 320 square feet when installed or erected on site.]~~

(C) is not a utility trailer, enclosed trailer, or other trailer that is not designed for human habitation as its primary function.

(b) Loss of identity as a motor vehicle.

(1) A trailer is presumed to be permanently affixed to realty, and therefore an improvement to real property that loses its identity as a motor vehicle, if:

(A) it is attached so that it cannot be reasonably reconstructed and made operational for highway use; or

(B) it is attached or installed in a manner that meets all governmental standards (if any) for the installation, including zoning regulations, building codes, federal regulations, and other requirements applicable to the land on which it is located; and it is either:

(i) installed on land owned by the purchaser, if the purchaser intends to incorporate the trailer as a permanent fixture to the land; or

(ii) installed on land leased to the purchaser, if the lease contract provides that improvements to the land become the property of the lessor.

(2) A trailer is presumed to be temporarily affixed to the real property, and remains a motor vehicle, if:

(A) the owner of the trailer only has permission to use the land but no contractual right to do so; or

(B) the owner of the trailer has a contractual right to use the land and also has the right to remove the trailer at any time or upon the termination of the contract.

(c) Application of ~~[the]~~ motor vehicle sales and gross rental receipts tax ~~[to farm machines, timber machines, and trailers]~~.

(1) A retail sale of a trailer is a taxable sale of a motor vehicle. Motor vehicle sales or use tax is due on the total sales price including charges for all accessories attached at the time of sale and for transportation prior to the sale. The rental of a trailer is also a taxable transaction. Gross rental receipts tax is due on the gross receipts charged on the rental of a motor vehicle, including a trailer. Charges for transportation after the sale (transportation from the place of sale to the delivery or set-up site) and charges for installation or set-up after the sale are not subject to tax. ~~[Tax is due on the gross receipts charged on the rental of a motor vehicle.]~~

(2) A retail sale, use, or rental of a farm machine or a farm trailer is not subject to the motor vehicle sales and use tax or gross rental

receipts tax if the primary use of the machine or trailer is for an exempt purpose. For the purposes of this subsection, use for an exempt purpose means use [farm machine or trailer is used primarily] on a farm or ranch in the production of food for human consumption, grass, feed for any form of animal life[;] or other livestock, or agricultural products to be sold in the regular course of business. The use of a farm machine or farm trailer to transport persons or property to or from competitions, shows, or rodeos, or for any other similar use, is not use for an exempt purpose. [Farm trailers primarily used by the original producer in processing, packing, or marketing his own livestock or agricultural products are also exempt from motor vehicle sales and use tax.]

(3) Farm trailers are also exempt from motor vehicle sales and use tax and gross rental receipts tax if the primary use of the trailer is by the original producers in processing, packing, or marketing their own livestock or agricultural products. Use [A retail sale, use, or rental of a farm trailer used exclusively] in processing, packing, or marketing agricultural products by an agricultural cooperative or gin is not exempt [subject to the tax], unless the cooperative or gin can prove the cooperative or gin itself is the original producer of all agricultural products being processed, packed, or marketed, and that those functions are performed at a location operated by the cooperative or gin.

(4) A [Effective January 1, 2001, a] retail sale, use, or rental of a timber machine or a timber trailer is not subject to motor vehicle sales and use tax or gross rental receipts tax if the primary use of the timber machine or timber trailer is [used primarily] in [a] timber operations [operation].

(5) A retail sale, use, or rental of an oilfield portable unit, as defined in this section, is not subject to motor vehicle sales and use tax or gross rental receipts tax. An oilfield portable unit that would otherwise be subject to motor vehicle sales and use tax, such as a trailer, becomes a taxable motor vehicle any time the unit ceases to be used exclusively as an oilfield portable unit. The tax is the obligation of the owner of the oilfield portable unit based on the owner's current book value of the unit multiplied by the current tax rate cited in Tax Code, §152.021(b). The tax should be remitted directly to the comptroller using form 14-112, Texas Motor Vehicle Sales/Use Tax Payment. Tax due on diverted units that are held for motor vehicle rental should be submitted on form 14-117, Texas Motor Vehicle Rental Tax Return. For more information regarding the taxation of oilfield portable units, refer to §3.306 of this title.

(d) Claiming exemption.

(1) Farmers, ranchers, agricultural producers, and timber operators must register with the comptroller and obtain a valid Texas Agriculture and Timber Exemption Registration Number. This registration number must be indicated on the exemption certificate described in this subsection and on the Application for Texas Certificate of Title/Tax Statement (Form 130-U) filed with the County Tax Assessor-Collector at the time of titling and/or registration. In addition, a person claiming the exemption for a farm or timber machine has the burden to show, at the time the vehicle is titled and/or registered, that the vehicle has been properly adapted or modified to qualify for the exemption.

(2) All persons engaged in the business of selling or renting agricultural and timber items that are exempt from the motor vehicle sales and use tax or gross rental receipts tax as described in this section must obtain from all purchasers:

(A) A completed Texas Motor Vehicle Tax Exemption Certificate for Agricultural/Timber (Form 14-319) or a completed Motor Vehicle Rental Exemption Certificate (Form 14-305 Back) for qualifying motor vehicle rentals;

(B) a copy of the Ag/Timber Registration Number Confirmation letter issued by the comptroller (Form 01-926); or

(C) a blanket exemption certificate or the Ag/Timber Registration Number Confirmation letter (Form 01-926) covering all motor vehicle purchases or rentals, provided that the motor vehicles being sold or rented are only of a type or quantity that would not generally be used except on a farm or ranch or in timber operations. When a person sells or rents both taxable motor vehicles and motor vehicles that may qualify for exemption under this section, the seller may either obtain an exemption certificate for each motor vehicle that qualifies for exemption or obtain a blanket certificate at the time the purchaser makes an initial exempt purchase or rental and keep that certificate on file. When subsequent exempt purchases or rentals are made, the invoice must be stamped with the words "exempt agricultural purposes," and the purchaser must sign the invoice.

(3) All persons engaged in the business of selling, renting, or leasing agricultural and timber items must retain a copy of the documents described in paragraph (2) of this subsection at their principal place of business for at least four years from the date of the transaction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302431

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 475-0387



SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.828

The Comptroller of Public Accounts proposes an amendment to §3.828, concerning Workers' Compensation Insurance Gross Premiums for the Purpose of Maintenance Taxes. The amendment is to correct errors; to remove unnecessary wording; to modify definitions; to clarify existing definitions; to add definitions; to remove definitions that were not used in the rule; to add references to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance where necessary; and to correct grammatical errors.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the manner in which maintenance taxes on workers' compensation gross premiums would be determined. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin,

Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the Comptroller administers under other law.

The amendment implements Insurance Code, Chapter 255, addressing the correct reporting of maintenance taxes on workers' compensation premiums.

§3.828. *Workers' Compensation Insurance Gross Premiums for the Purpose of Maintenance Taxes.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this section shall have the meaning assigned to them in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance.

(1) Deductible credit--The amount by which the Estimated Modified/Schedule Rating/Network Premium is reduced as a result of the policyholder's election of a deductible option.

(2) Dividends paid to policyholders--The return of part of the premium paid for a policy issued on a participating basis.

(3) Return premium--The portion of a premium that is returned to the insured as a result of cancellation, endorsement, rate adjustment, or a calculation that the total estimated policy cost was in excess of the actual premium.

(4) Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance--A manual published by the Texas Department of Insurance. The manual provides insurers licensed in Texas to write workers' compensation insurance with the rules, classifications, endorsements, forms, and experience rating plan applicable to Texas workers' compensation policies.

(1) Basis of premium--Premiums shall be computed on the total remuneration paid or payable by the insured for services of employees covered by the policy as defined in Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance, Rule V.]

(2) Classification codes--Classification codes group employers into classifications so that each class reflects the exposure common to those employers. Classification codes are listed in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance.]

(3) Deductible credit--The amount by which the modified premium is reduced as a result of the policyholder's election of a deductible option. The deductible credit shall be applied according to Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance, Rule XIX.]

(4) Dividends paid to policyholders--Dividends paid to policyholders are a return of part of the premium paid for a policy issued on a participating basis.]

(5) Expense constant--An expense constant is a premium charge which applies to a policy in addition to the premium. It covers issuing, recording and auditing expenses related to the policy. It is a

flat charge and is not subject to premium discount, experience rating or retrospective rating adjustment.]

[(6) Modified premium--The modified premium is obtained by multiplying the insured's premium times the modifier (i.e., Modified Premium = Premium x Modifier).]

[(7) Modifier--A modifier adjusts the premium upward or downward. The modifier must be calculated in accordance with Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and §VII, Employers' Liability Insurance. The insured and the insurance company may negotiate the calculated modifier downward in accordance with §V, Texas Experience Rating Plan.]

[(8) Premium--The premium is determined by multiplying the basis of premium by the rate for each classification of employee, adjusted by any other charges that may be applicable, as provided for in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (i.e., Premium = (Basis of premium x Rate) +/- Other charges).]

[(9) Premium discount--A premium discount is a reduction of the premium based on the economies of scale related to the size of the policy. A retrospectively rated policy includes premium discount in rating factors rather than as a separate item.]

[(10) Rate--The rate is the amount of premium for each \$100 of payroll for each classification of employee.]

[(11) Remuneration--Remuneration is money or substitutes for money.]

[(12) Retrospectively rated policies--Retrospectively rated policies are policies for which the final premium is based on losses incurred during the policy period. The final premium is not determined until either all claims are closed or the pre-selected maximum has been reached.]

[(13) Return premium--Return premium is the portion of a premium which is returned to the insured as a result of cancellation, rate adjustment, or a calculation that an advance premium was in excess of the actual premium.]

[(14) Standard premium--The premium before the application of premium discount. It is obtained by subtracting the deductible credit from the modified premium (i.e., Standard premium = Modified premium - Deductible credit).]

(b) Gross written premiums subject to maintenance tax.

[(1) For policies issued with an effective date prior to September 1, 1993, gross premiums shall be computed in the following manner: Standard Premium less Premium Discount plus Expense Constant less Return Premium less Dividends Paid on that direct business (i.e., Gross Premiums = (Standard Premium - Premium Discount + Expense Constant - Return Premium) - Dividends Paid).]

[(2) For new or renewal policies issued, and for additional written premium or return premium due to endorsement, cancellation, audit, or other adjustment, with an effective or adjustment date on or after September 1, 1993, gross written premiums subject to maintenance tax shall be computed according to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance, Rule III. For maintenance tax reporting purposes, the deductible credit, if any, must be added back to the total estimated policy cost to determine gross written premium. [in the following manner: Standard Premium less Premium Discount plus Expense Constant plus Deductible Credit less Return Premium less Dividends Paid on that direct business (i.e., Gross Premium = (Stan-

Standard Premium - Premium Discount + Expense Constant + Deductible Credit - Return Premium) - Dividends Paid).]

(c) For retrospectively [Retrospectively] rated policies, any[-Any] adjustments made [to retrospectively rated policies] are [to be] treated as gross written premium subject to maintenance tax [premiums written] in the year of the adjustment for the purpose of computing gross workers' compensation premiums.

(d) This section applies to licensed insurers only. The tax base for certified self-insurers is defined by [the] Labor Code, §407.104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302439

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 475-0387



PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.41

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.41, concerning premium payments under TRS-ActiveCare, the health benefits program for eligible employees of participating public school districts and other entities and covered dependents.

Currently TRS or the administering firm (i.e., BCBSTX) sends bills for premiums to participating entities in TRS-ActiveCare on or about the 15th of each month. The bills are issued for that month of coverage. Under the current §41.41, each participating entity remits payment on or before the sixth day after the last day of each month in which TRS or BCBSTX issues the bills to the participating entity. Because the bills are issued in the month for which coverage is provided, premium payments have been rendered a month in arrears.

During the current plan year, TRS-ActiveCare has experienced an unexpectedly high level of claims. This high level of claims has placed the solvency of the TRS-ActiveCare fund at risk. This risk constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare. Insolvency could mean TRS-ActiveCare will not be able to pay the health benefit claims of its enrollees. Providers of medical and pharmaceutical services would also be at risk of not being paid.

The proposed amendments to §41.41 would require that each participating entity remit payment on or before the 15th day of each month in which TRS or BCBSTX issues the bills to the

participating entity, beginning with bills generated on or after September 1, 2013. By moving the due date of each bill forward in time by approximately three weeks, the amendment would move the payment from a month in arrears to the month of coverage. With this change, the risk to the solvency of the TRS-ActiveCare fund will be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare will be eliminated.

In light of an urgent need to provide adequate and prompt notice, direction, and instruction to both the administering firm and the participating entities in TRS-ActiveCare concerning proposed new payment deadlines, such deadlines needed in order to eliminate the above noted risk, TRS is concurrently submitting emergency adoption of the amended section with fewer than 30 days' notice.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule. The proposed amendments expedite payment of premiums for TRS-ActiveCare but do not change the amounts due from local government employers.

For each year of the first five years that the proposal will be in effect, Brian Guthrie, Executive Director of TRS, and Mr. Welch have determined that the public benefit will be to eliminate the imminent peril to the public health, safety or welfare of individuals enrolled in TRS-ActiveCare caused by a premium payment schedule that allowed participating entities to remit payment a month in arrears.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendments will be in effect, there is no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. The proposed amendments will only change the timing of, not the amounts of, the premium payments from participating entities to TRS-ActiveCare. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amendments, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amendments; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendments are proposed under Insurance Code §1579.052, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary and to adopt rules to administer the program.

Cross-reference to statute. The proposed amendments affect Insurance Code §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

§41.41. *Premium Payments.*

(a) For each bill generated by TRS or its designee on or before August 31, 2013, each [Eaeh] participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.

(b) For each bill generated by TRS or its designee on or after September 1, 2013, each participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the fifteenth day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.

(c) [(b)] A participating entity will be billed for all full-time and part-time employees enrolled in TRS-ActiveCare who were employed by the participating entity on the date that TRS or its designee generates the bill for that billing month as reported by the participating entity. In addition, a participating entity will be billed retroactively for all full-time and part-time employees who enroll after the date on which the bill is generated for that month and choose coverage for that month. A participating entity will also be billed for any individual covered in accordance with §41.40 of this title (relating to Coverage Continuation While on Leave Without Pay[-]). Participating entities are responsible for collecting all applicable premiums and other costs that are required to be paid by its full-time employees, part-time employees, and any individuals covered in accordance with §41.40 of this title. A participating entity shall remit the full amount billed each month.

(d) [(e)] Participating entities shall not modify the amount of any bill or remit any amount different from the amount billed. A participating entity shall report adopted adjustments, including those seeking credit for terminated employees, to the administering firm no later than the 45th day after the billing date. TRS may reject any adopted adjustments that are inappropriate or untimely, including those adjustments seeking credit for terminated employees reported later than 45 days after the billing date on which the employee was first incorrectly reported as eligible for coverage. Approved adjustments will be reflected on a subsequent bill.

(e) [(d)] TRS may take corrective action against a participating entity that fails to remit payment in accordance with the timelines and other requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.
TRD-201302477
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 542-6438

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.9

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §215.9, concerning Training Coordinator. Subsection (b)(5) is amended to define who may serve as a representative of a training provider at the annual training coordinators' conference. Subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that the individuals who attend the annual training coordinators' conference have a vested interest in the training provider they represent.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring those that represent a training provider at the conference have an affiliation with the provider and a vested interest in the provider that they represent.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be some anticipated cost to small business, individuals, or both as a result of the proposed section as one person representing multiple training provider contracts will no longer be permitted.

Comments on the proposal may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this proposal.

§215.9. Training Coordinator.

(a) A training coordinator must hold a valid instructor license or certificate and must be a full-time paid employee.

(b) The training coordinator must:

(1) ensure compliance with commission rules and guidelines:

(2) prepare, maintain, and submit the following reports within the time frame specified:

(A) reports of training:

(i) basic licensing course shall be submitted prior to students attempting a licensing exam; and

(ii) within 30 days of completion of continuing education course;

(B) self-assessment reports as required by the commission;

(C) a copy of advisory board minutes during an on-site evaluation;

(D) training calendars-schedules must be available for review or posted on the internet no later than 30 days prior to the beginning of each calendar quarter or academic semester;

(E) any other reports or records as requested by the commission;

(3) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:

(A) appointing and supervising qualified instructors;

(B) maintaining course schedules and course files, including lesson plans;

(C) enforcing all admission, attendance, retention, and other standards set by the commission and the training provider;

(D) securing and maintaining all facilities necessary to meet the inspection standards of this section;

(E) controlling the discipline and demeanor of each student and instructor during class;

(F) distributing a current version of the Texas Occupations Code, Chapter 1701 and commission rules to all students at the time of admission to any course that may result in the issuance of a license;

(G) distributing learning objectives to all students at the beginning of each course;

(H) ensuring that all learning objectives are taught and evaluated;

(I) proctoring or supervising all examinations to ensure fair, honest results; and

(J) maintaining records of tests and other evaluation instruments for a period of five years.

(4) receive all commission notices on behalf of the training provider and forward each notice to the appointing authority; and

(5) attend or have a designee attend each academy coordinator's workshop conducted by the commission. No person may serve as a representative for more than one provider per conference. Each representative must be affiliated with the training provider.

(c) If the position of training coordinator becomes vacant, upon written request from the chief administrator of the training provider the commission may, at the discretion of the executive director, waive the requirements for a period not to exceed six months.

(d) Upon written request from the chief administrator of a training provider that does not have a full-time paid staff, the commission may, at the discretion of the executive director, waive the requirements in subsection (a) of this section.

(e) The effective date of this section is October 17, 2013 [January 1, 2012].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302474

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 936-7713



CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.2

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.2, concerning Minimum Standards for Telecommunicators. Subsection (a)(12) is amended to require successful completion of a commission-approved crisis communications course for telecommunicators as a part of the minimum standards. Subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure individuals applying for certification have crisis skills for the certification sought.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring telecommunicators are trained in crisis communications.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§217.2. Minimum Standards for Telecommunicators.

(a) The commission shall issue a certificate to a telecommunicator who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; or

(B) holds a high school diploma;

(2) is at least 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(9) has not had a dishonorable or bad conduct discharge;

(10) has not had a commission license denied by final order or revoked;

(11) is not currently on suspension, or does not have a surrender of license currently in effect;

(12) meets the minimum training standards by successfully completing the basic telecommunicator course and a commission-approved crisis communications [~~intervention~~] course;

(13) has not violated any commission rule or provision of the Texas Occupations Code, Chapter 1701; and

(14) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) The commission may issue a temporary telecommunicator certificate, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator certificate. A temporary telecommunicator certificate expires 12 months from the original appointment date.

(f) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a certificate and shall not accept any appointment. If an application for certification is found to be false or untrue, it is subject to cancellation or recall.

(g) The effective date of this section is October 17, 2013 [~~January 17, 2013~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302471

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 936-7713

◆ ◆ ◆

37 TAC §217.11

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.11, concerning Legislatively Required Continuing Education for Licensees. Subsection (d) is amended to eliminate the training requirements for civil rights, racial sensitivity, and cultural diversity for a licensee who has completed or is exempted from such training under another commission license or certificate. Subsection (p) is amended to reflect the effective date of the changes.

This amendment is necessary to minimize training course duplication requirements.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by lessening training time for duplicate course requirements for holders of multiple licenses.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no cost to small businesses, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.352, Continuing Education Programs and §1701.353, Continuing Education Procedures.

No other code, article, or statute is affected by this proposal.

§217.11. Legislatively Required Continuing Education for Licensees.

(a) Individuals appointed as peace officers shall complete at least 40 hours of continuing education training and must complete a training and education program that covers recent changes to the laws of this state and of the United States pertaining to peace officers every 24-month unit of a training cycle.

(b) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer whom it appoints or employs with a continuing education program at least once every 48-month training cycle. Part of this training program consists of topics selected by the agency. This rule does not limit the number of hours of continuing education an agency may provide.

(c) Part of the legislatively required peace officer training in every 48-month training cycle must include the curricula and learning objectives developed by the commission, to include:

(1) for an officer holding a basic proficiency certificate or less, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; and

(C) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics; and

(2) supervision issues for each peace officer appointed to their first supervisory position, this training must be completed within 24 months following the date of appointment as a supervisor.

(d) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall meet the training requirements for civil rights, racial sensitivity, and cultural diversity in every 48-month training cycle unless the person has completed or is otherwise exempted from legislative required training under another commission license or certificate.

(e) A peace officer first licensed on or after January 1, 2011, must complete a basic training program on the trafficking of persons within one year of licensure.

(f) For appointed or elected constables:

(1) An individual appointed or elected to that individual's first position as constable must complete at least 40 hours of initial training for new constables in accordance with Texas Occupations Code §1701.3545(c).

(2) Each constable must complete at least 40 hours of continuing education in accordance with Texas Occupations Code §1701.3545(b), each 48-month cycle.

(g) Each deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle.

(h) In accordance with Texas Occupations Code §1701.358, individuals appointed as "chief" or "police chief" of a police department:

(1) A newly appointed or elected police chief shall complete the initial training program for new chiefs not later than the second anniversary of that individual's appointment or election as chief.

(2) Each police chief must receive at least 40 hours of continuing education provided by the Bill Blackwood Law Enforcement Management Institute each 24-month unit.

(i) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(j) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(k) The commission may take disciplinary action against a licensee for failure to complete the legislatively required continuing education program at least once every training unit.

(l) The commission may take disciplinary action against a licensee for failure to complete the appropriate training within a training cycle.

(m) Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this

section beginning in the first complete 24-month unit immediately following the date of licensing.

(n) Individuals licensed as county jailers shall complete the legislatively required continuing education program required under this section beginning in the first complete 48-month cycle immediately following the date of licensing.

(o) All peace officers must meet all continuing education requirements except where exempt by law.

(p) The effective date of this section is October 17, 2013 [July 12, 2012].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302472

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 936-7713



CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.7

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.7, concerning Investigative Hypnosis Proficiency. Subsection (b) is added to limit the certificate's validity to two years. Subsection (c) is added to give direction on keeping a certificate valid. Subsection (d) is added to give direction on obtaining a new certificate. Re-lettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section unless an agency chooses to offer supplemental pay for this certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small businesses, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission;

Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates and §1701.403, Investigative Hypnosis.

No other code, article, or statute is affected by this proposal.

§221.7. *Investigative Hypnosis Proficiency.*

(a) To qualify for an investigative hypnosis proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of the current basic investigative hypnosis course; and

(2) pass the approved examination for investigative hypnosis proficiency.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) [(b)] The effective date of this section is October 17, 2013 [March 1, 2001].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302473

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 936-7713



PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.143

The Texas Commission on Jail Standards proposes an amendment to §259.143(e), concerning Privacy Shields, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small

businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.143. Furnishings for Inmate Housing Areas.

(a) - (d) (No change.)

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs [~~configured or equipped to provide reasonable privacy from exposure to persons outside the cell~~]. Privacy shields shall extend from about 15" above the finished floor to about 5' high and shall be securely anchored.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302444

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



37 TAC §259.150

The Texas Commission on Jail Standards proposes an amendment to §259.150, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.150. Food Passes

Food passes shall be provided and lockable [~~should should not be less than 15 inches wide and four and one-half inches high. Lockable~~] shutters should be provided to prevent passage of contraband.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302445

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



**SUBCHAPTER C. NEW LOCKUP DESIGN,
CONSTRUCTION AND FURNISHING
REQUIREMENTS**

37 TAC §259.239

The Texas Commission on Jail Standards proposes an amendment to §259.239(e), concerning Privacy Shields, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.239. Furnishings for Inmate Housing Areas.

(a) - (d) (No change.)

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs [~~configured or equipped to provide reasonable privacy from exposure to persons outside the cell~~]. Privacy shields shall extend from about 15" above the finished floor to about 5' high and shall be securely anchored.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302447

Brandon S. Wood
Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



37 TAC §259.246

The Texas Commission on Jail Standards proposes an amendment to §259.246, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.246. *Food Passes.*

Food passes shall be provided and lockable [~~should should not be less than 15 inches wide and four and one-half inches high. Lockable~~] shutters should be provided to prevent passage of contraband.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302448

Brandon S. Wood
Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER D. NEW MEDIUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.333

The Texas Commission on Jail Standards proposes an amendment to §259.333(e), concerning Privacy Shields, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.333. *Furnishings for Inmate Housing Areas.*

(a) - (d) (No change.)

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs [~~configured or equipped to provide reasonable privacy from exposure to persons outside the cell~~]. Privacy shields shall extend from about 15" above the finished floor to about 5' high and shall be securely anchored.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302449

Brandon S. Wood
Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



37 TAC §259.340

The Texas Commission on Jail Standards proposes an amendment to §259.340, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.340. Food Passes.

Food passes shall be provided and lockable [~~should not be less than 15 inches wide and four and one-half inches high. Lockable~~] shutters should be provided to prevent passage of contraband.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302450

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.432

The Texas Commission on Jail Standards proposes an amendment to §259.432, concerning Furnishings for Inmate Housing Areas, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.432. Furnishings for Inmate Housing Areas.

(a) - (d) (No change.)

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs [~~configured or equipped to provide reasonable privacy from exposure to persons outside the cell~~]. Privacy shields shall extend from about 15" above the finished floor to about 5' high and shall be securely anchored.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302451

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



37 TAC §259.438

The Texas Commission on Jail Standards proposes an amendment to §259.438, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.438. Food Passes.

Food passes shall be provided and lockable shutters should be provided to prevent passage of contraband [~~should not be less than 15 inches wide and four and one-half inches high~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302452

Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



SUBCHAPTER H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.745

The Texas Commission on Jail Standards proposes an amendment to §259.745, concerning Furnishings for Inmate Housing Areas, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.745. Furnishings for Inmate Housing Areas.

(a) - (d) (No change.)

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs ~~[configured or equipped to provide reasonable privacy from exposure to persons outside the cell]~~. Privacy shields shall extend from about 15" above the finished floor to about 5' and shall be securely anchored.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302453
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



37 TAC §259.752

The Texas Commission on Jail Standards proposes an amendment to §259.752, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.752. Food Passes.

Food passes shall be provided and lockable ~~[should not be less than 15 inches wide and 4 1/2 inches high. Lockable]~~ shutters should be provided to prevent passage of contraband.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302455
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



CHAPTER 260. COUNTY CORRECTIONAL CENTERS

SUBCHAPTER B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.137

The Texas Commission on Jail Standards proposes an amendment to §260.137, concerning Furnishings for Offender Housing Areas, to provide flexibility for direct supervision housing units.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated

as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§260.137. *Furnishings for Offender Housing Areas.*

(a) - (d) (No change.)

(e) Privacy Shields. Offender toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be equipped to restrict viewing from persons outside the cell and staff areas in direct supervision designs [~~configured or equipped to provide reasonable privacy from exposure to persons outside the cell~~]. Privacy shields shall extend from about 15 inches above the finished floor to about four feet-six inches high and shall be securely anchored.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302456

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



37 TAC §260.144

The Texas Commission on Jail Standards proposes an amendment to §260.144, concerning Food Passes, to provide clarity that all cells are to be provided a food pass.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures es-

tablishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§260.144. *Food Passes.*

Food passes shall be provided and lockable [~~should not be less than 15 inches wide and four and one-half inches high. Lockable~~] shutters should be provided to prevent passage of contraband where appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302457

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



CHAPTER 265. ADMISSION

37 TAC §265.1

The Texas Commission on Jail Standards proposes an amendment to §265.1, concerning Receiving, to create uniformity within minimum jail standards by replacing corrections officer with jailer.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§265.1. *Receiving.*

The receiving officer shall determine that each inmate is being committed by a duly authorized officer. If only one jailer [~~corrections officer~~] is on duty, the delivering officer should stay until the inmate is locked into the facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302458
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



37 TAC §265.2

The Texas Commission on Jail Standards proposes an amendment to §265.2, concerning Search, to create uniformity within minimum jail standards by replacing corrections officer with jailer and provide flexibility to sheriffs by allowing designated staff to conduct searches.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§265.2. Search.

(a) (No change.)

(b) When facility personnel reasonably believe it to be necessary, inmates should undergo a thorough strip search for weapons and contraband ~~that [which]~~ may pose a threat to the security or safety of the facility. The strip search shall be conducted by jailer(s) or designated staff ~~[corrections officer(s)]~~ of the same gender in a reasonable and dignified manner and place.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302459
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



37 TAC §265.11

The Texas Commission on Jail Standards proposes an amendment to §265.11, concerning Shower, to create uniformity within

minimum jail standards by replacing corrections officer with jailer and provide flexibility to sheriffs by allowing designated staff to supervise showers.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§265.11. Shower.

Following booking and prior to housing assignment, inmates should be showered. Inmate showers shall be supervised by a jailer or designated staff ~~[corrections officer]~~ of the same gender.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302460
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: July 28, 2013
For further information, please call: (512) 463-8236



CHAPTER 275. SUPERVISION OF INMATES

37 TAC §275.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Jail Standards or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Jail Standards proposes the repeal of §275.3, concerning Corrections Officer Pay, because the standard is unenforceable by the Commission as it has no authority regarding jailer salary.

Brandon S. Wood, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wood has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be clarification of existing standards. There will be no effect on small businesses. There

is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeal is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this repeal are Local Government Code, Chapter 351, §351.002 and §351.015.

§275.3. *Corrections Officer Pay.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302461

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 463-8236



PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. TREATMENT

DIVISION 2. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §380.8761

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Juvenile Justice Department (TJJD) proposes to repeal §380.8761 (concerning Substance Abuse Services). TJJD has determined that the rule is no longer needed. The basic provisions of this rule are contained in other TJJD rules such as §380.8505 of this title (concerning Initial Assessment), §380.8701 of this title (concerning Case Planning), and §380.8751 of this title (concerning Special Needs Offenders).

Linda Brooke, Chief of Staff, has determined that for the first five-year period the repeal is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the repeal.

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be the deletion of an obsolete rule.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are re-

quired to comply with the repeal as proposed. No private real property rights are affected by adoption of the repeal.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

The repeal is proposed under Human Resources Code §242.003, which authorizes TJJD to make rules appropriate to the proper accomplishment of its functions.

No other statute, code, or article is affected by this proposal.

§380.8761. *Substance Abuse Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302442

Brett Bray

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 490-7014



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 49. CONTRACTING FOR COMMUNITY CARE SERVICES

SUBCHAPTER G. PERSONAL ATTENDANT WAGES

40 TAC §§49.71 - 49.73

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §49.71, concerning contractors with personal attendant employees; §49.72, concerning financial management services agencies; and §49.73, concerning enforcement of personal attendant wages, in Chapter 49, Contracting for Community Care Services.

BACKGROUND AND PURPOSE

The purpose of the new sections is to implement the 2014-2015 General Appropriations Act (Article II, Special Provisions, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring certain community services contractors to pay personal attendants base wages of at least a specified amount. Specifically, the following DADS contractors will be subject to the new rules beginning September 1, 2013: Primary Home Care (including Primary Home Care/Family Care/Community Attendant Services), Day Activity and Health Services, Community Care for the Aged and Disabled--Title XX Residential Care, and Consumer Directed Services for Primary Home Care (including primary home care/family care/community attendant services). Effective September 1, 2014, the rules will apply to these additional contractors: Community Based Alternatives--Home and Com-

munity Support Services, Medically Dependent Children Program, Consumer Directed Services for Community Based Alternatives--Home and Community Support Services, and Consumer Directed Services for Medically Dependent Children Program.

The required base wage levels are \$7.50 per hour effective September 1, 2013, and \$7.86 per hour effective September 1, 2014. The proposed rules will require contractors to take specific action to ensure that attendants are made aware of and are paid at least these amounts for base wages. Financial management services agencies will be required to ensure that employers using the consumer directed services option pay personal attendants in accordance with the rules. The proposed rules also address the methods DADS will use to oversee compliance and the actions and sanctions that may be imposed for noncompliance. The rules only apply to contractors for which the 83rd Legislature has appropriated funds with the objective of ensuring that personal care attendants are paid at least \$7.50 per hour for fiscal year (FY) 2014 and \$7.86 per hour for FY 2015. The proposed rules will help to ensure that the appropriated funds are used in accordance with the Legislature's stated purpose.

SECTION-BY-SECTION SUMMARY

Proposed new §49.71 establishes new rules regarding minimum base wages that certain contractors must pay to an employee who is employed as a personal attendant. The proposed section requires a contractor to notify employees who are personal attendants of the base wage and document the notification.

Proposed new §49.72 establishes new rules regarding minimum base wages that a financial management services agency must ensure that an employer in the consumer directed services option pays to an employee who is employed as a personal attendant.

Proposed new §49.73 establishes new rules regarding monitoring compliance with wage requirements and actions DADS may take for non-compliance, including requiring a contractor to pay an employee the difference between the base wage and the wage the contractor paid.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed new sections are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government general revenue for each year of the first five years the proposed new sections are in effect is an estimated additional cost of \$6,700,239 in fiscal year (FY) 2014; \$18,412,081 in FY 2015; \$18,412,081 in FY 2016; \$18,412,081 in FY 2017; and \$18,412,081 in FY 2018.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses because providers are receiving rates to fund increased pay for personal attendants. The rules require only that providers use those funds for their intended purpose and document that current and newly hired attendants are notified of the required wage levels and paid at or above those levels.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is higher pay for personal attendants, which will improve the stability and quality of the workforce that provides essential personal care services to aging and disabled Texans.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the new sections.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Terry Pierce at (512) 438-2540 in DADS Community Services Contracts. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-13R12, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R12" in the subject line.

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§49.71. Contractors with Personal Attendant Employees.

(a) This section and §49.73 of this subchapter (relating to Enforcement of Personal Attendant Wages) apply to a contractor that has a contract for:

(1) Primary Home Care Program, including primary home care, family care, and community attendant services;

(2) day activity and health services; or

(3) Community Care for the Aged and Disabled--Title XX Residential Care.

(b) Effective September 1, 2014, this section and §49.73 of this subchapter apply to a contractor described in subsection (a) of this section and a contractor that has a contract for:

(1) Community Based Alternatives--Home and Community Support Services; or

(2) Medically Dependent Children Program.

(c) A contractor to which this section applies must pay an employee who is employed as a personal attendant a base wage of at least \$7.50 per hour. Effective September 1, 2014, a contractor to which this section applies must pay an employee who is employed as a personal attendant a base wage of at least \$7.86 per hour.

(d) A contractor described in subsection (a)(1), (2), or (3) of this section must:

(1) no later than September 15, 2013, notify an employee who is employed as a personal attendant on September 1, 2013, that the contractor is required to pay the wages described in subsection (c) of this section; and

(2) notify an employee hired as a personal attendant after September 1, 2013, no later than three days after the employee accepts an offer of employment, that the contractor is required to pay the wages described in subsection (c) of this section.

(e) A contractor described in subsection (b)(1) or (2) of this section must:

(1) no later than September 15, 2014, notify an employee who is employed as a personal attendant on September 1, 2014, that the contractor is required to pay the wages described in subsection (c) of this section; and

(2) notify an employee hired as a personal attendant after September 1, 2014, no later than three days after the employee accepts an offer of employment, that the contractor is required to pay the wages described in subsection (c) of this section.

(f) A contractor must maintain written documentation, signed by an employee, that a notification required by subsection (d) or (e) of this section has been given to the employee.

§49.72. Financial Management Services Agencies.

(a) This section and §49.73 of this subchapter (relating to Enforcement of Personal Attendant Wages) apply to a contractor that has a contract as a financial management services agency for the Primary Home Care Program, including primary home care, family care, and community attendant services.

(b) Effective September 1, 2014, this section and §49.73 of this subchapter apply to a contractor described in subsection (a) of this section and a contractor that has a contract as:

(1) a financial management services agency for the Community Based Alternatives Program--Home and Community Support Services; or

(2) a financial management services agency for the Medically Dependent Children Program.

(c) A contractor to which this section applies must ensure that an employer using the consumer directed services option pays an employee who is employed as a personal attendant a base wage of at least \$7.50 per hour. Effective September 1, 2014, a contractor to which this section applies must ensure that an employer using the consumer directed services option pays an employee who is employed as a personal attendant a base wage of at least \$7.86 per hour.

§49.73. Enforcement of Personal Attendant Wages.

(a) DADS may monitor compliance with this subchapter in response to a complaint and through routine fiscal and compliance monitoring, as described in §49.52 and §49.53 of this chapter (relating to Fiscal Monitoring and Compliance Monitoring), including reviewing payroll records, financial management records, and the documentation required by §49.71(f) of this subchapter (relating to Contractors with Personal Attendant Employees).

(b) If DADS determines that a contractor has not complied with this subchapter, DADS may take an action described in §49.11(d) of this chapter (relating to Contracting Requirements) or impose a sanction described in §49.61(b) of this chapter (relating to Sanctions).

(c) Corrective action required by DADS in accordance with subsection (b) of this section may include the contractor paying a personal attendant who was not paid the wages required by §49.71(c) or §49.72(c) of this subchapter (relating to Financial Management Services Agencies) the difference between the amount required and the amount paid to the personal attendant.

(d) DADS may refer a contractor to the Health and Human Services Commission Office of Inspector General based on failure to comply with this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2013.

TRD-201302470

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Proposed date of adoption: September 1, 2013

For further information, please call: (512) 438-4466



PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES SUBCHAPTER N. FAMILY COST SHARE SYSTEM

40 TAC §§108.1403, 108.1413, 108.1415, 108.1419, 108.1427

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes amendments to 40 TAC Chapter 108, Division for Early Childhood Intervention Services, Subchapter N, Family Cost Share System, §108.1403, Definitions; §108.1413, Family Monthly Maximum Payment; §108.1415, Information Used to Calculate Family Monthly Maximum Payment; §108.1419, Third-Party Payors; and §108.1427, IFSP Services Subject to Suspension for Nonpayment.

BACKGROUND AND JUSTIFICATION

Pursuant to DARS Rider 31, *Early Childhood Intervention Family Cost Share*, Article II of 83(R) SB 1, General Appropriations Act, DARS proposes amendments to 40 TAC §108.1413, which requires families with an adjusted gross income greater than 400% of the federal poverty level to pay the full cost of early childhood intervention (ECI) services, not to exceed 5% of the

family's monthly adjusted income. DARS proposes additional amendments within 40 TAC Chapter 108, Subchapter N to align other rules with the proposed amendments noted above, and to comply with federal requirements.

SECTION-BY-SECTION SUMMARY

DARS proposes an amendment to §108.1403(13), Definitions, to clarify the definition of Inability to Pay.

DARS proposes amendments to §108.1413, Family Monthly Maximum Payment, to clarify the use of Figure: 40 TAC §108.1413(c), DARS ECI Sliding Fee Scale, and to expand the figure to:

- * increase the family monthly maximum payment to equal the full cost of services, not to exceed 5% of the family's adjusted monthly income, for families with an adjusted gross income greater than 400% of the federal poverty level;

- * add a requirement that parents pay the full cost of services if they refuse to attest to information related to third-party coverage, family, size or income;

- * add a requirement that parents pay the full cost of services if they refuse to consent to release personally identifiable information to third-party payors or to bill third-party payors;

- * add an allowance for parents to request an exception if documentation shows that use of benefits or insurance may have certain negative effects on the family; and

- * add existing rule language to the figure in order to clarify the system of fees.

DARS proposes an amendment to §108.1415, Information Used to Calculate Family Monthly Maximum Payment, to require the contractor to bill a parent the full cost of services if he or she refuses to attest in writing that information regarding third party coverage, family size, and gross income is true and accurate.

DARS proposes amendments to §108.1419, Third-Party Payors, to require the contractor to bill a parent the full cost of services if he or she refuses to give consent for the contractor to release personally identifiable information to a third-party payor or to bill a third-party payor for early childhood intervention services. DARS proposes allowing an exception if using the family's insurance will result in a reduction or loss of benefits due to: charges against the annual or lifetime cap, increased premiums, or loss of insurance benefits for any member of the family. If the parent provides verification that using the family's insurance may result in these negative outcomes, the contractor bills the family according to the family's adjusted income. DARS proposes a clarification that DARS ECI absorbs additional cost of family fees, insurance deductibles, co-pays, and co-insurance only when the cost exceeds the family monthly maximum payment.

DARS proposes amendments to §108.1427, IFSP Services Subject to Suspension for Nonpayment, to require the contractor to inform the parent of his or her options related to requesting a review of the family cost share amount, as described in §108.1421 of this title (relating to Review of Family Cost Share Amount) or a reconsideration and adjustment of the family cost share obligation as described in §108.1423 of this title (relating to Reconsideration and Adjustment of Family Cost Share Obligation).

FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for the first five years that the proposed amendments will be

in effect, there is no anticipated cost savings to the state. Ms. Wright has determined ECI contractors may collect up to an additional \$592,410 from families, for the first year that the proposed amendments will be in effect and collect up to an additional \$1,093,680 per year for each subsequent four years. The DARS contract is payor of last resort, after the deduction of collections from allowable costs. ECI contractors are required to apply collections to expenses including costs not covered elsewhere (current losses), cost to modify billing systems, implement cost sharing, and service delivery. The anticipated fiscal impact to ECI contractors to implement the amended rules cannot be determined. Each ECI contractor operates a separate billing system, so the cost to modify each system is unknown.

The proposed amendments will result in an increased financial cost to families with an adjusted income over 400% of the federal poverty level.

There are no foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the amended rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

In accordance with Texas Government Code, §2001.022, Ms. Wright has determined that, the proposed amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed amendments will have no adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT

Ms. Wright also has determined that the anticipated public benefit as a result of administering and enforcing the amended rules will be compliance with federal regulations and specifications in DARS Rider 31, *Early Childhood Intervention Family Cost Share*, Article II of 83(R) SB 1, General Appropriations Act.

REGULATORY ANALYSIS

DARS has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

DARS has determined that these proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756; or emailed to DARSrules@dars.state.tx.us. All comments must be submitted before August 1, 2013, at 5:00 p.m.

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §§1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1403. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Ability to Pay**--The family, as defined in this section, is financially able to contribute to the cost of IFSP services through family monthly maximum payments and the use of public or private insurance benefits.

(2) **Adjusted Income**--The gross income of the family, as defined in this section, minus allowable deductions. Adjusted income is used to determine a family's ability to pay and to determine the family monthly maximum payment.

(3) **Allowable Deductions**--Certain unreimbursed out-of-pocket expenses, not paid for by another source, deducted from gross income to calculate adjusted income.

(4) **CHIP**--The Children's Health Insurance Program (CHIP) administered by the Texas Health and Human Services Commission.

(5) **Dependent**--Any person who meets the definition of 26 USC §152 Dependent Defined.

(6) **Family**--When used in this subchapter, family shall mean the child's parent, the child, and other dependents of the parent.

(7) **Family Cost Share Amount**--The total collection of co-pays, co-insurance, deductibles, family fees, and benefits paid by public or private insurance. In no case will the family cost share amount exceed the actual cost of service.

(8) **Family Cost Share System**--The system of collecting reimbursement for early childhood intervention services from private insurance, public insurance and benefits, and co-pays, co-insurance, deductibles, and family fees charged to the parent.

(9) **Family Fees**--Monetary fees collected from a child's family to pay for early intervention services that do not include co-pays, co-insurance, and deductibles.

(10) **Family Monthly Maximum Payment**--The maximum, total amount of money collected from a family in one month, including family fees, co-pays, co-insurance, and deductibles.

(11) **Federal Poverty Guidelines**--The poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC §9902(2).

(12) **Gross Income**--All income received by the family, as defined in this section, for determination of the family monthly maximum payment, from whatever source, that is considered income by the Internal Revenue Service before federal allowable deductions are applied.

(13) **Inability to Pay**--The family's inability to contribute to the cost of early childhood intervention services due to no public or private insurance benefits and an adjusted income at or below 100% of the federal poverty guideline.

~~[(13) **Inability to Pay**--The determination that the family, as defined in this section, is not able to financially contribute to the cost of early childhood intervention services.]~~

(14) **Sliding Fee Scale**--The federal poverty guidelines based scale of graduated family monthly maximum payments developed by DARS.

(15) **Third-Party Payor**--A company, organization, insurer, or government agency that makes payment for early childhood intervention services received by a child and family. Third-party payors include commercial insurance companies, TRICARE, Medicaid, CHIP, HMOs and PPOs.

(16) **TRICARE**--The U.S. Department of Defense health care entitlement for active duty, Guard and Reserve and retired members of the military, and their eligible family members and survivors.

§108.1413. Family Monthly Maximum Payment.

(a) The family monthly maximum payment is the total amount of money collected from a family in one month, including family fees, co-pays, co-insurance, and deductibles. The assigned family monthly maximum payment does not increase if the family has more than one child receiving IFSP services.

(b) The contractor may not charge a family a co-pay or any co-insurance, deductibles or family fees for children in receipt of Medicaid.

(c) The contractor determines the family's assigned family monthly maximum payment based on the family's placement on the DARS ECI sliding fee scale. Placement on the sliding fee scale is based on family size and annual adjusted income. The sliding fee scale is based on the formula in the figure in this subsection. The sliding fee scale must be provided to the parent and additional copies can be obtained from DARS.

Figure: 40 TAC §108.1413(c)

(d) Family size is calculated by adding: the child, the number of parents living in the home, and the number of the parent's other dependents.

(e) The annual adjusted income is calculated by subtracting allowable deductions from the annual gross income.

(f) The contractor calculates the allowable deductions amount using:

(1) the actual amounts that were paid over the previous 12 months and are expected to continue during the IFSP period; and

(2) projections for new expenses expected to occur during the IFSP period.

(g) Allowable deductions are limited to the following family expenses that are not reimbursed by other sources:

(1) medical or dental expenses that meet the requirements in subsection (h) of this section;

(2) childcare and respite expenses;

(3) costs and fees associated with the adoption of a child; and

(4) court-ordered child support payments for children who were not counted as family members or dependents in calculating the adjusted income and family monthly maximum payment.

(h) Allowable deductions for medical and dental expenses are costs to primarily alleviate or prevent a physical or mental defect or illness. Allowable deductions for medical and dental expenses are limited to the cost of:

- (1) diagnosis, cure, alleviation, treatment, or prevention of disease;
- (2) treatment of any affected body part or function;
- (3) legal medical services delivered by physicians, surgeons, dentists, and other medical practitioners;
- (4) medication, medical supplies, and diagnostic devices;
- (5) premiums paid for insurance that covers the expenses of medical or dental care;
- (6) transportation to receive medical or dental care; and
- (7) medical or dental debt that is being paid on an established payment plan.

(i) In situations where there is shared physical custody or shared legal or financial responsibility for a child, the adjusted income(s) of the parent who financially supports the child will be considered unless conditions warrant otherwise.

(j) The parent must sign a family cost share agreement acknowledging the family monthly maximum payment calculated according to the figure in subsection (c) of this section. The contractor must not provide IFSP services subject to a family cost share amount until the parent signs a family cost share agreement.

§108.1415. Information Used to Calculate Family Monthly Maximum Payment.

(a) The parent must attest in writing that information regarding third-party coverage, family size, and gross income is true and accurate. If the parent refuses to attest in writing that information regarding third party coverage, family size, and gross income is true and accurate, then the contractor must bill the parent the full cost of services [the highest family monthly maximum payment on the DARS ECI sliding fee scale].

(b) The parent must attest in writing that information regarding allowable deductions used to calculate the annual adjusted income is true and accurate.

(1) The contractor bases the family monthly maximum payment solely on annual gross income if the parent refuses to attest in writing that allowable deductions information is true and accurate.

(2) The contractor may implement written local policies requiring verification of allowable deductions in addition to the family's required written attestation.

§108.1419. Third-Party Payors.

(a) The contractor must assist the parent in identifying and accessing other available funding sources to pay for early childhood intervention services.

(b) The contractor must always obtain prior written parental consent before:

- (1) releasing personally identifiable information to any third-party payor; or
- (2) billing third-party payors.

(c) If the parent refuses to give consent for the contractor to release personally identifiable information to a third-party payor or to bill the third-party payor for early childhood intervention services, the

parent is considered to have an ability to pay and the contractor must bill the parent the full cost of services [highest family monthly maximum payment on DARS ECI sliding fee scale].

(d) The contractor calculates the family monthly maximum payment using the adjusted family income if the parent provides verification that using the family's benefits or insurance may result in the following outcomes, as described in 34 CFR §303.520:

- (1) a decrease in available lifetime coverage or any other insured benefit for the child or parent;
- (2) an increase in premiums; or
- (3) a loss of insurance benefits for any member of your family.

(e) [(d)] The contractor must assist the parent with enrolling a potentially eligible child in Medicaid or CHIP. The contractor may waive the family monthly maximum payment while Medicaid or CHIP eligibility is being determined, not to exceed 90 days.

(f) [(e)] Payment from a third-party contributes toward the family cost share amount for the month the IFSP service was delivered. [The family must not be charged in excess of the family monthly maximum payment.] DARS ECI absorbs any additional cost of family fees, insurance deductibles, co-pays and co-insurance which exceed the family monthly maximum payment.

(g) [(f)] The contractor must adjust the amount billed to the family if the contractor or parent successfully disputes a denied claim.

§108.1427. IFSP Services Subject to Suspension for Nonpayment.

(a) The contractor must suspend IFSP services subject to a family cost share amount as required by §108.1411 of this title (relating to IFSP Services Subject to the Family Cost Share Amount) when the balance remains delinquent for 90 days. For a family consenting to payment by third-party payors, the 90-day time period begins the date the contractor receives notice that the third-party payor has denied claims for reimbursement and all appeals are exhausted, if applicable.

(b) Before suspending IFSP services, the contractor must inform the parent that:

- (1) he or she has the option to request a:

(A) review of the family cost share amount, as described in §108.1421 of this title (relating to Review of Family Cost Share Amount); or

(B) a reconsideration and adjustment of the family cost share obligation, as described in §108.1423 of this title (relating to Reconsideration and Adjustment of Family Cost Share Obligation);

[(b)] Families must be notified that:

(2) [(1)] IFSP services subject to a family cost share amount will be suspended when a balance is delinquent for 90 days; and

(3) [(2)] the contractor cannot guarantee the same schedule or the same individual service provider if IFSP services are later reinstated.

(c) Respite vouchers may be denied for payment during a suspension period.

(d) A notation must be made on the family cost share agreement that IFSP services subject to a family cost share amount have been suspended due to non-payment.

(e) The contractor must reinstate suspended IFSP services when the family's account is paid in full or the family negotiates an

acceptable payment plan with the contractor. The IFSP team must reassess the appropriateness of the IFSP before reinstating IFSP services if IFSP services are suspended for more than six months. The contractor must document the reinstatement of IFSP services date on the IFSP and the family cost share agreement.

(f) The contractor must maintain written local policy for collecting delinquent family cost share accounts. Documentation must reflect all reasonable attempts to collect unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification, and e-mail.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302446

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: July 28, 2013

For further information, please call: (512) 424-4050

◆ ◆ ◆

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission withdraws the proposed amendment to §355.112 which appeared in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2582).

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302428

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 12, 2013

For further information, please call: (512) 424-6900

SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission withdraws the proposed amendment to §355.7103 which appeared in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2591).

Filed with the Office of the Secretary of State on June 12, 2013.

TRD-201302429

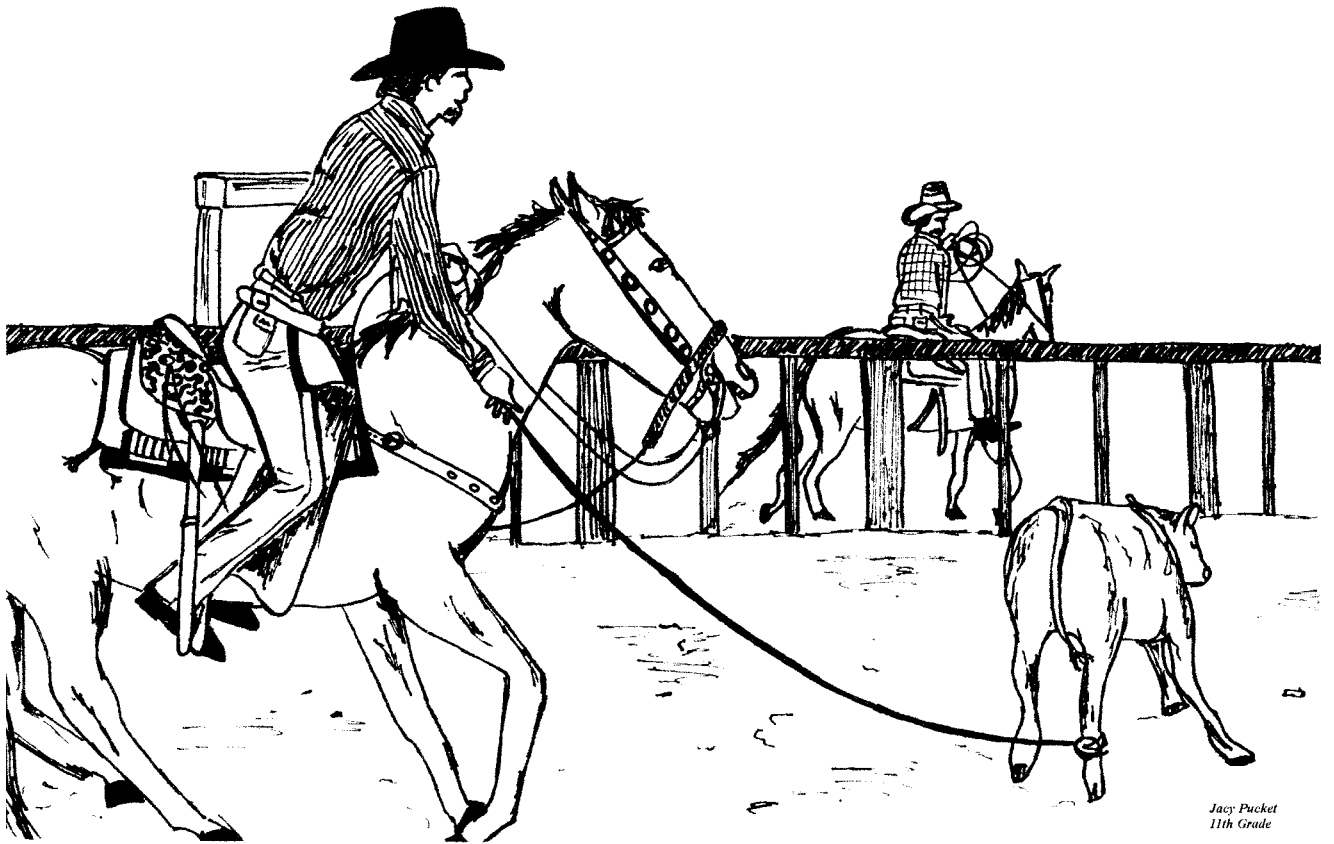
Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 12, 2013

For further information, please call: (512) 424-6900



Jacy Pucket
11th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §171.7

The Texas Judicial Council (Council) adopts an amendment to §171.7 regarding the Council's monthly justice court activity report. Section 171.7 is adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1945) and will not be republished.

Justification for Rule Action

The adopted amendment conforms the civil case type categories in the monthly justice court activity report to the civil case type categories promulgated by the Supreme Court of Texas in its rules effective August 31, 2013 (Misc. Docket No. 13-9049).

Summary of Comments

The Council received no comments regarding the amendment of §171.7.

Statutory Authority

The amendment is adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

No other statutes, articles, or codes are affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302512

Mena Ramon

General Counsel

Texas Judicial Council

Effective date: September 1, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 463-6321



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

The Texas Education Agency (TEA) adopts amendments to §101.3022 and §101.3041, concerning student assessment. The amendments are adopted without changes to the proposed text as published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2282) and will not be republished. Section 101.3022 addresses assessment and cumulative score requirements for Texas high school graduation programs. Section 101.3041 addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The adopted amendments implement performance standards for the STAAR® Grades 3-8 assessments and the STAAR® Modified and STAAR® Alternate end-of-course (EOC) assessments. The adopted amendments also clarify the English III reading and writing and Algebra II assessment requirements for the distinguished high school program.

In June 2009, the 81st Texas Legislature enacted House Bill (HB) 3, which made significant changes to the Texas student assessment program, including the requirement that the commissioner of education determine the various performance levels for assessments. To enact the requirements of HB 3 relating to performance levels, the commissioner adopted 19 TAC §101.3041, Performance Standards, effective August 21, 2012. At that time, the commissioner established the performance standards for the STAAR® EOC general education assessments and the Texas Assessment of Knowledge and Skills (TAKS) for Grade 10 and exit level.

The adopted amendment to 19 TAC §101.3041, Performance Standards, implements the phase-in of performance standards for the STAAR® Grades 3-8 general education assessments, as well as the Grades 3-8 and EOC performance standards for the modified and alternate assessments.

Subsection (a) is modified to establish the performance standards for the STAAR® Grades 3-8 general education, modified, and alternate assessments. The general education assessment performance standards are added as Figure: 19 TAC §101.3041(a)(1). The modified assessment performance standards are added as Figure: 19 TAC §101.3041(a)(2). The alternate assessment performance standards are added as Figure: 19 TAC §101.3041(a)(3).

Subsection (b) is modified to establish the performance standards for the STAAR® Modified and Alternate EOC assessments. The EOC modified assessment performance standards are added as Figure: 19 TAC §101.3041(b)(2). The EOC alternate assessment performance standards are added as Figure 19 TAC §101.3041(b)(3). The current figure for the EOC general education assessment performance standards, already adopted in rule, is reorganized as Figure: 19 TAC §101.3041(b)(1). No changes are made to the EOC general education assessment performance standards.

For the general education assessments in both English and Spanish, the STAAR® academic performance levels are: Level III: Advanced Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Unsatisfactory Academic Performance.

A student is considered to have passed a given STAAR® general education assessment if the student earns a score at least as high as the score indicating Level II: Satisfactory Academic Performance.

For the modified assessments, the STAAR® academic performance levels on a test that identify student performance are: Level III: Advanced Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Unsatisfactory Academic Performance.

For the alternate assessments, the STAAR® academic performance levels are: Level III: Accomplished Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Developing Academic Performance.

For the general education and modified assessments, a phase-in period is implemented to provide school districts with time to adjust instruction, provide additional professional development, and close knowledge gaps. A four-year, two-step phase-in for Level II will be in place for all STAAR® general education and modified EOC assessments as follows: Phase-in standard 1 for the Level II standard: the standard for students first testing in a grade or content area in 2012 and 2013; Phase-in standard 2 for the Level II standard: the standard for students first testing in a grade or content area in 2014 and 2015; and Recommended Level II standard: the standard for students first testing in a grade or content area in 2016 or thereafter.

For the Grades 3-8 STAAR® general education and modified assessments, the following four-year, two-step phase-in for Level II will be in place: Phase-in standard 1 for the Level II standard: the standard for all students testing in a grade in 2012 and 2013; Phase-in standard 2 for the Level II standard: the standard for all students testing in a grade in 2014 and 2015; and Recommended Level II standard: the standard for all students testing in a grade in 2016 or thereafter.

To specify the assessment and cumulative score requirements for the Texas diploma high school programs, the commissioner adopted 19 TAC §101.3022, Assessment and Cumulative Score Requirements for the Minimum, Recommended, and Distinguished Achievement High School Programs, effective May 29, 2012.

The adopted amendment to 19 TAC §101.3022 adds language to subsection (a)(2)(B) to clarify the Algebra II and English III assessment requirements for the distinguished high school program. As a result of a recent determination by the commissioner of education and the commissioner of higher education to set the college-readiness standard at the recommended per-

formance level II for the Algebra II and English III EOC assessments, the agency has revised the Algebra II and English III EOC assessment requirements for purposes of graduating on the distinguished high school program. To receive a Texas diploma on the distinguished high school program, a student is required to achieve the Recommended Level II performance standard on the Algebra II and English III reading and writing EOC assessments.

To receive a Texas diploma while taking STAAR® Modified or Alternate assessments, a student will need to meet the requirements of his or her individualized education program.

As required by the TEC, §39.0242, the performance standards will be reviewed at least once every three years. During standards review, additional impact and validity-study data will be examined, including data from longitudinal studies and studies evaluating the relationship between performance on the STAAR® assessments and performance in subsequent grades in the same content area. This ongoing review process will provide additional information to verify whether the established performance standards are appropriate or should be adjusted.

The adopted amendments have no procedural and reporting implications beyond those that apply to all Texas students. The adopted amendments have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began April 12, 2013, and ended May 13, 2013. Following is a summary of the public comments received and the corresponding agency responses regarding proposed revisions to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 2, Participation and Assessment and Cumulative Score Requirements for Graduation, and Division 4, Performance Standards.

Comment: A representative from the Region One Education Service Center asked whether the amended performance requirement for the Algebra II and English III assessments necessary to receive a diploma on the distinguished high school plan, as specified in 19 TAC §101.3022, will consequently change the Algebra II and English III performance requirement necessary to receive a diploma on the recommended high school plan.

Agency Response: The English III and Algebra II assessment performance requirement to receive a diploma on the recommended high school program will remain unchanged.

Comment: The Texas Council of Administrators of Special Education, Inc. (TCASE), a representative from Slaton Independent School District (ISD), a representative from Joshua ISD, and a representative from Weslaco ISD expressed concern that students who are administered the STAAR® Alternate cannot meet Level II: Satisfactory Performance if they are assessed on a STAAR® Alternate using only Level 1 tasks. TCASE commented that this is arbitrary, discriminatory, and duplicitous towards the student. The various representatives and TCASE requested that the performance standards or assessments be modified to en-

sure that students with the most significant cognitive disabilities are given the same opportunity to succeed as their peers.

The representative from Weslaco ISD commented that it is unfair to have the STAAR® Alternate students in question count against a school district's accountability rating.

Agency Response: Regarding the concern about STAAR® Alternate students who use only Level 1 tasks counting towards school accountability, accountability provisions are outside the scope of this rule.

Regarding TCASE's claim of discrimination with an arbitrary standard, the agency disagrees. As a result of a recommendation from the agency's standard-setting committee for the STAAR® Alternate assessments, it was determined that a student participating in the STAAR® Alternate cannot achieve the Level II performance level, indicating satisfactory performance, without completing some Level 2 assessment tasks. This decision was made after the committee reviewed impact data that provided evidence of a tendency to select Level 1 tasks for certain students to the exclusion of Level 2 and Level 3 tasks.

Whether a student taking STAAR® Alternate needs to meet Level II: Satisfactory Performance is decided by a student's Admission, Review, and Dismissal (ARD) committee on a case-by-case basis. Students achieving the Level I standard on a STAAR® Alternate are typically the most cognitively disabled students in the state. For these students, an ARD committee determines an Individualized Education Program (IEP), including whether a student needs to achieve satisfactory performance on an assessment instrument for grade promotion and graduation purposes. Regardless of an assessment result, the ARD and IEP processes, which can use scores on an assessment as one indicator of academic achievement, give these students the opportunity to succeed in a school setting while ensuring the teaching of appropriate skills.

Currently, there exists legislation in the Texas House and Senate that would require the agency to redesign the STAAR® Alternate assessment system. If the subsequent legislation causes substantial changes to the alternate assessments, this rule will be revised as needed.

DIVISION 2. PARTICIPATION AND ASSESSMENT AND CUMULATIVE SCORE REQUIREMENTS FOR GRADUATION

19 TAC §101.3022

The amendment is adopted under the Texas Education Code, (TEC), §39.024, which authorizes the commissioner of education and the commissioner of higher education to establish student performance standards for the Algebra II and English III end-of-course assessment instruments indicating that students have attained college readiness; TEC, §39.0241, which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, including the performance standards for certain end-of-course assessment instruments and for Grades 3-8 assessment instruments. TEC, §39.0241(a-1), authorizes the commissioner of education, in collaboration with the commissioner of higher education, to determine the level of performance necessary to indicate college readiness, as defined by TEC, §39.024(a); and TEC, §39.0242, which authorizes the commissioner of education, in collaboration with the commissioner of higher education, to revise the standards of performance considered to be satis-

factory. Based on data collected and studies performed periodically, the commissioner is authorized to increase the rigor of the performance standard established under TEC, §39.0241(a), as the commissioner determines necessary.

The amendment implements the Texas Education Code, §§39.024, 39.0241, and 39.0242.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302467

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 3, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 475-1497



DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The amendment is adopted under the Texas Education Code, (TEC), §39.024, which authorizes the commissioner of education and the commissioner of higher education to establish student performance standards for the Algebra II and English III end-of-course assessment instruments indicating that students have attained college readiness; TEC, §39.0241, which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, including the performance standards for certain end-of-course assessment instruments and for Grades 3-8 assessment instruments. TEC, §39.0241(a-1), authorizes the commissioner of education, in collaboration with the commissioner of higher education, to determine the level of performance necessary to indicate college readiness, as defined by TEC, §39.024(a); and TEC, §39.0242, which authorizes the commissioner of education, in collaboration with the commissioner of higher education, to revise the standards of performance considered to be satisfactory. Based on data collected and studies performed periodically, the commissioner is authorized to increase the rigor of the performance standard established under TEC, §39.0241(a), as the commissioner determines necessary.

The amendment implements the Texas Education Code, §§39.024, 39.0241, and 39.0242.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2013.

TRD-201302468

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 3, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.191

The Texas Board of Architectural Examiners adopts an amendment to §1.191, concerning Description of Experience Required for Registration by Examination, without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2730) and will not be republished.

The board has determined that a provision within the rule limited the number of hours of experience for which an architectural candidate may receive credit through academic internships. National standards no longer include such a limitation. The board determined its standards should align with the national standard and removed the restriction on academic internship credit.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which provide authority for the Board to adopt rules as necessary to regulate the practice of architecture and to prescribe by rule standards for satisfactory experience to take the architectural registration examination, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302516

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: July 7, 2013

Proposal publication date: May 3, 2013

For further information, please call: (512) 305-9040



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.811

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.811, concerning election by reciprocal or interinsurance exchange pursuant to Insurance Code, Chapter 224, without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2745). The amendment is to include a reference to the form for election

withdrawal, to clarify the election of either Chapter 221 or 224 under which these entities are subject to tax, to include a reference to the applicability of this section to Insurance Code, Chapter 221 and to remove two cites to specific sections of Chapter 224 in subsection (f).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b), which provide the comptroller with authority to prescribe, adopt and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 and taxes, fees or other charges which the comptroller administers under other law.

The amendment implements Insurance Code, Chapter 224.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2013.

TRD-201302398

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: July 1, 2013

Proposal publication date: May 3, 2013

For further information, please call: (512) 475-0387



34 TAC §3.834

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.834, concerning volunteer fire department assistance fund assessment, with changes to the proposed text as published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2608). The amendment is to update the rule to include language not previously included in relation to recoupment of the assessment, to define acronyms, to clarify a reference to the National Association of Insurance Commissioners (NAIC) Annual Statement, to reformat a portion of the rule and to clarify definitions.

The change from the proposed rule is made to implement Section 9 of House Bill 7, 83rd Legislature, 2013, which could change the assessment amount. The assessment amount is now the lesser of the amount appropriated from the volunteer fire department assistance fund account in the general revenue fund or \$30 million. This change is in subsection (b).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b) which provide the comptroller with authority to prescribe, adopt and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 and taxes, fees or other charges which the comptroller administers under other law.

The amendment implements Insurance Code, Chapter 2007 addressing the Volunteer Fire Department Assistance Fund assessment.

§3.834. *Volunteer Fire Department Assistance Fund Assessment.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual statement--A comprehensive statement, in the format promulgated by the National Association of Insurance Commissioners (NAIC), of an insurer's financial condition, business operations, and activities, required to be filed with state insurance departments and the NAIC.

(2) Insurer--An insurance entity that is authorized to engage in business in this state, including a stock company, mutual, farm mutual, county mutual, Lloyd's plan, or reciprocal or interinsurance exchange, as of the assessment date.

(3) Net direct premium--The total gross direct premium written by an insurer, as reported to the Texas Department of Insurance and reflected on the insurer's NAIC Annual Statement State Page Exhibit for:

(A) policies of:

- (i) homeowner's insurance;
- (ii) fire insurance;
- (iii) farm and ranch owner's insurance;
- (iv) private passenger automobile physical damage insurance; and
- (v) commercial automobile physical damage insurance; and

(B) the nonliability portion of a commercial multiple peril policy.

(4) Twelve-month period--The time period from January 1 through December 31, which is the same as the tax year and NAIC Annual Statement period.

(b) Calculation of the assessment. Effective beginning with tax year 2013, the comptroller shall assess against all insurers to which this section applies amounts necessary for each fiscal year, as determined by the Commissioner of Insurance, to collect a combined total equal to the lesser of the total amount that the General Appropriations Act appropriates from the volunteer fire department assistance fund account in the general revenue fund for that state fiscal year or \$30 million. The comptroller will use the following formula, based on premium data provided by the Texas Department of Insurance that was compiled from the NAIC Annual Statements filed by insurers, to calculate the amount of each insurer's assessment:
Figure: 34 TAC §3.834(b)

(c) Billing date and due date. The comptroller will bill the assessment on or before May 31. Payment of the assessment is due by August 1.

(d) Enforcement provisions. Tax Code, Title 2, Subtitles A and B, apply to the comptroller's administration, collection, and enforcement of the assessment under Insurance Code, Chapter 2007.

(e) Retaliatory taxes. The assessment may not be included on the retaliatory tax worksheet since insurers may recoup the assessment from policyholders.

(f) Recoupment of assessment. An insurer may recover an assessment under this section as provided under Insurance Code, §2007.005. An insurer that recovers the assessment from its policyholders is required by Insurance Code, §2007.006 to provide notice to each policyholder regarding the amount of the assessment being

recovered on the declarations page, the renewal certificate, or a billing statement.

(g) Assessment final date. The amount that is assessed an insurer under Insurance Code, Chapter 2007, is final as of the date the billings are generated by the comptroller. The comptroller will not recalculate the amount due under this section to reflect any amendments to an insurer's Annual Statement. The assessment under Insurance Code, Chapter 2007 is not a deficiency determination under Tax Code, §111.008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2013.

TRD-201302399

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: July 1, 2013

Proposal publication date: April 26, 2013

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 255. RULEMAKING PROCEDURES **37 TAC §255.4**

The Texas Commission on Jail Standards adopts an amendment to §255.4, concerning Petition of Interested Persons, in order to conform to Government Code §2001.021 without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2194).

This amendment is adopted to conform to Government Code §2001.021.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302480

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236

◆ ◆ ◆

CHAPTER 257. CONSTRUCTION APPROVAL RULES

37 TAC §257.9

The Texas Commission on Jail Standards adopts an amendment to §257.9, concerning Laws Applicable, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2195).

This amendment is adopted because the two codes cited have been superseded and replaced by the International Building Code, which incorporates both codes into one.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302481

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236

◆ ◆ ◆

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.115

The Texas Commission on Jail Standards adopts an amendment to §259.115, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2195).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302482

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236

◆ ◆ ◆

SUBCHAPTER C. NEW LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.216

The Texas Commission on Jail Standards adopts an amendment to §259.216, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2196).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302483

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236

◆ ◆ ◆

37 TAC §259.223

The Texas Commission on Jail Standards adopts an amendment to §259.223, concerning Control Rooms/Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2197).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302484

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER D. NEW MEDIUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.313

The Texas Commission on Jail Standards adopts an amendment to §259.313, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2197).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302485

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



37 TAC §259.318

The Texas Commission on Jail Standards adopts an amendment to §259.318, concerning Control Rooms/Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2198).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures es-

tablishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302486

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.413

The Texas Commission on Jail Standards adopts an amendment to §259.413, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2198).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302487

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



37 TAC §259.418

The Texas Commission on Jail Standards adopts an amendment to §259.418, concerning Control Rooms/Guard Stations without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2198).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302488

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER F. TEMPORARY HOUSING--TENTS

37 TAC §259.514

The Texas Commission on Jail Standards adopts an amendment to §259.514, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2199).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302489

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER G. TEMPORARY HOUSING--BUILDINGS

37 TAC §259.614

The Texas Commission on Jail Standards adopts an amendment to §259.614, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2199).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302490

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



SUBCHAPTER H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.715

The Texas Commission on Jail Standards adopts an amendment to §259.715, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2200).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302491

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



37 TAC §259.722

The Texas Commission on Jail Standards adopts an amendment to §259.722, concerning Control Rooms/Guard Stations, without

changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2200).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302492

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



CHAPTER 260. COUNTY CORRECTIONAL CENTERS

SUBCHAPTER B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.113

The Texas Commission on Jail Standards adopts an amendment to §260.113, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2200).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302493

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



37 TAC §260.118

The Texas Commission on Jail Standards adopts an amendment to §260.118, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2201).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302494

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



CHAPTER 261. EXISTING CONSTRUCTION RULES

SUBCHAPTER A. EXISTING MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.115

The Texas Commission on Jail Standards adopts an amendment to §261.115, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2201).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302495

Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Effective date: July 7, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 463-8236



37 TAC §261.122

The Texas Commission on Jail Standards adopts an amendment to §261.122, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2202).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302496
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Effective date: July 7, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 463-8236



SUBCHAPTER B. EXISTING LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.215

The Texas Commission on Jail Standards adopts an amendment to §261.215, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2202).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302497
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Effective date: July 7, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 463-8236



37 TAC §261.222

The Texas Commission on Jail Standards adopts an amendment to §261.222, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2202).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302498
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Effective date: July 7, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 463-8236



SUBCHAPTER C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.312

The Texas Commission on Jail Standards adopts an amendment to §261.312, concerning Functions, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2203).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302499

Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236



37 TAC §261.317

The Texas Commission on Jail Standards adopts an amendment to §261.317, concerning Guard Stations, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2203).

This amendment is adopted to provide uniformity by changing the term "guard" to "jailer."

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2013.

TRD-201302500

Brandon S. Wood

Executive Director

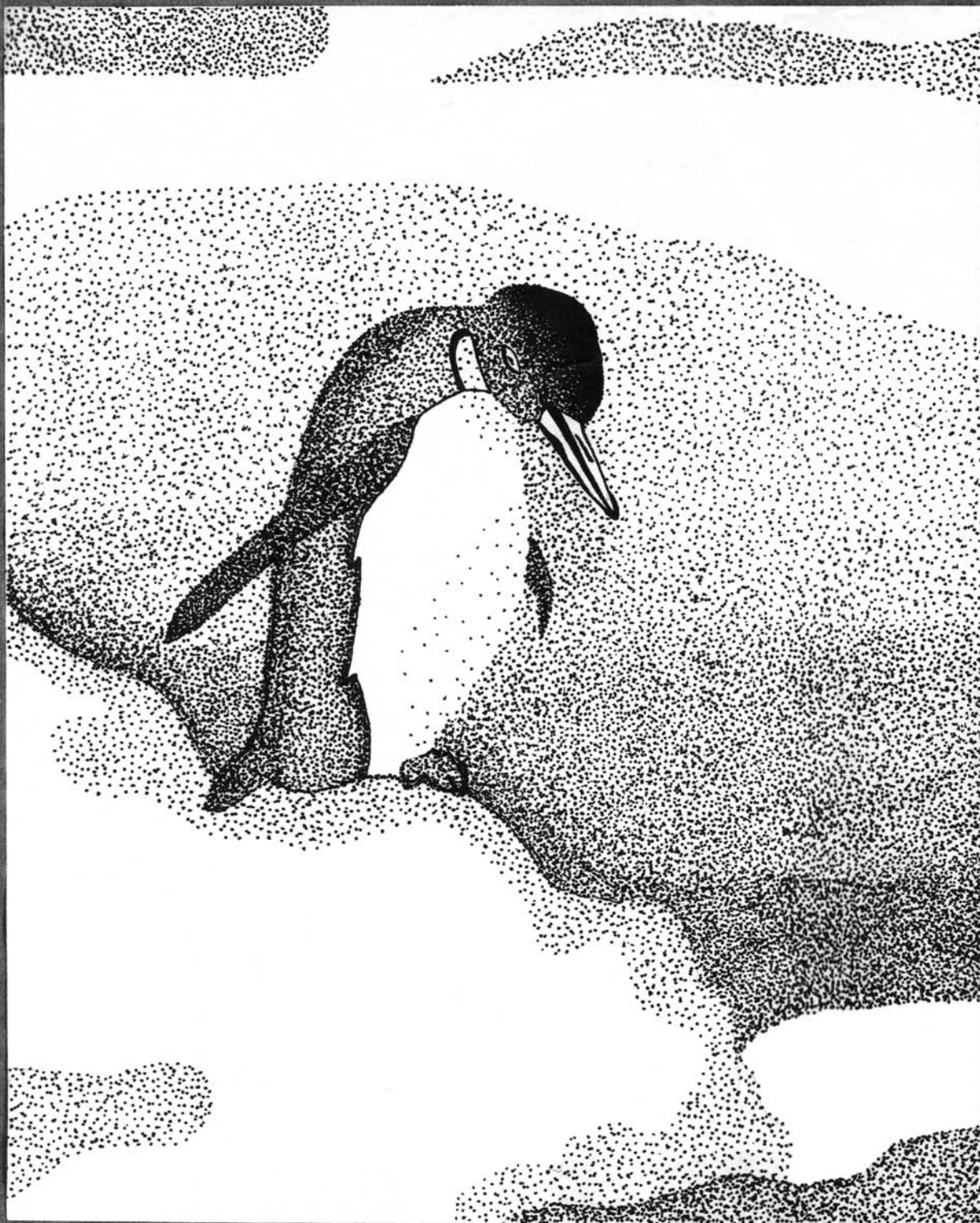
Texas Commission on Jail Standards

Effective date: July 7, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 463-8236





Anita Cunningham

REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of Chapter 8, concerning the TexShare Library Consortium, in accordance with the requirements of Government Code, §2001.039. Notice of the review was published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2145).

The commission finds that the reasons for the adoption of the rules in Chapter 8 continue to exist. The rules were adopted pursuant to the Government Code, §441.225(b), which permits the Texas State Library and Archives Commission to adopt rules to govern the operation of the consortium. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission to establish and maintain the TexShare consortium as a resource-sharing consortium.

The commission readopts Chapter 8 in accordance with the Government Code, §2001.039. No comments were received regarding the review of the chapter.

TRD-201302527

Edward Seidenbrg

Interim Director and Librarian

Texas State Library and Archives Commission

Filed: June 18, 2013



Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2243), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Chapter 517, Subchapter A, §§517.1 - 517.12, concerning Conservation Assistance, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No public comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts the rule, without changes, since it governs the State Board's program to assist soil and water conservation districts with matching funds.

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

This completes the State Board's review of 31 TAC Chapter 517, Subchapter A, §§517.1 - 517.12.

TRD-201302565

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: June 19, 2013



Pursuant to the notice of proposed rule review published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2243), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Chapter 519, Subchapter A, §§519.1 - 519.12, concerning Technical Assistance Program, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No public comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts the rule, without changes, since it governs the State Board's program assisting soil and water conservation districts with reimbursements for technical assistance with conservation plans.

This completes the State Board's review of 31 TAC Chapter 519, Subchapter A, §§519.1 - 519.12.

TRD-201302564

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: June 19, 2013



Pursuant to the notice of proposed rule review published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2243), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Chapter 521, Subchapter A, §§521.1 - 521.13, concerning Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No public comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts the rule, without changes, since it governs

the State Board's program for agricultural soil and water conservation to conserve water resources.

This completes the State Board's review of 31 TAC Chapter 521, Subchapter A, §§521.1 - 521.13.

TRD-201302563

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: June 19, 2013



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.315(b)(4)

[Grand/Jackpot Prize Payment Options - Terminal Functionality]

[Currently Deployed (Old) Terminals]

[Terminal Type]	[Manual Entry]	[Playslip with No Payment Option Selected]
[ISYS] [(Retailer Terminal)]	[Default to Annuity; retailer toggles to choose Cash Value Option (CVO).]	[Terminal will default to Annuity and send the wager request for all playslips unless Multi-draw option is selected. Multi-draw option will result in the Confirmation screen showing the payment option.]
[GVTX/GVT2X] [(Retailer Terminal)]	[Retailer chooses between Annuity and CVO from menu options. No default.]	[Not Applicable.]
[SST] [(Self-service Terminal)]	[CVO only – designated on terminal Home Screen.]	[Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press “PRINT MY TICKET” to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.]
[GamePoint] [(Self-service Terminal)]	[CVO only – designated on terminal Home Screen.]	[Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press “PRINT MY TICKET” to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.]

[Conversion (New) Terminals]

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT Mini (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."

Figure: 16 TAC §401.315(e)(3)

Number	Relative Frequency
2	<u>2 of 15</u> [2 of 24]
3	<u>4 of 15</u> [7 of 24]
4	<u>3 of 15</u> [12 of 24]
<u>5</u>	<u>6 of 15</u>

Figure: 16 TAC §401.315(f)(3)(A)

Match Field 1	Match Field 2	Odds	Prize Category	Percentage of Prize Fund
5	1	1: <u>258,890,850</u> [175,711,536]	Jackpot	<u>65.154</u> [63.6]
5	0	1: <u>18,492,204</u> [3,904,701]	Second	<u>10.815</u> [42.8]
4	1	1: <u>739,688</u> [689,065]	Third	<u>1.352</u> [2.99]
4	0	1: <u>52,835</u> [15,313]	Fourth	<u>1.893</u> [1.96]
3	1	1: <u>10,720</u> [13,784]	Fifth	<u>.933</u> [2.18]
<u>3</u> [2]	<u>0</u> [4]	1: <u>766</u> [844]	Sixth	<u>1.306</u> [2.38]
<u>2</u> [3]	<u>1</u> [9]	1: <u>473</u> [306]	Seventh	<u>2.114</u> [4.58]
1	1	1: <u>56</u> [444]	Eighth	<u>7.083</u> [4.26]
0	1	1: <u>21</u> [75]	Ninth	<u>9.350</u> [5.34]
Reserve				0
Totals		1: <u>14.71</u> [39.89]		100

Figure: 16 TAC §401.320(g)(1)(A)

Match	Odds	Prize
0	1 in 2,704,156	\$250,000*
1	1 in 18,779	\$500
2	1 in 621	\$50
3	1 in 56	\$10
4	1 in 11	\$2
5	Not a winner	Not a winner
6	Not a winner	Not a winner
7	Not a winner	Not a winner
8	1 in 11	\$2
9	1 in 56	\$10
10	1 in 621	\$50
11	1 in 18,779	\$500
12	1 in 2,704,156	\$250,000*
	Overall odds of winning any prize: 1 in 4.54	
<u>*In any drawing where the number of top prize winners is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of \$5 million will be divided equally by the number of top prize winners.</u>		

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Registered Interior Designers	Total Fee (With the 25 cents times 2.25%)	With the 25 cents times 2.25%
Exam Application	\$100	\$100	\$100	\$102.51	\$2.51
Examination	****	***	**		
Registration by Examination--Resident*	\$355	\$355	\$355	\$363.24	\$8.24
Registration by Examination--Nonresident*	\$380	\$380	\$380	\$388.81	\$8.81
Reciprocal Application	\$150	\$150	\$150	\$153.63	\$3.63
Reciprocal Registration*	\$400	\$400	\$400	\$409.26	\$9.26
Active Renewal--Resident*	\$305	\$305	\$305	\$312.12	\$7.12
Active Renewal--Nonresident*	\$400	\$400	\$400	\$409.26	\$9.26
Active Renewal 1-90 days late--Resident*	\$357.50	\$357.50	\$357.50	\$365.80	\$8.30
Active Renewal > than 90 days late--Resident*	\$410	\$410	\$410	\$419.48	\$9.48
Active Renewal 1-90 days late--Nonresident*	\$500	\$500	\$500	\$511.51	\$11.51
Active Renewal > than 90 days late--Nonresident*	\$600	\$600	\$600	\$613.76	\$13.76
Emeritus Renewal--Resident	\$10	\$10	\$10	\$10.48	\$0.48
Emeritus Renewal--Nonresident	\$10	\$10	\$10	\$10.48	\$0.48
Emeritus Renewal 1-90 days late--Resident	\$15	\$15	\$15	\$15.59	\$0.59
Emeritus Renewal > than 90 days late--Resident	\$20	\$20	\$20	\$20.71	\$0.71
Emeritus Renewal 1-90 days late--Nonresident	\$15	\$15	\$15	\$15.59	\$0.59
Emeritus Renewal > than 90 days late--Nonresident	\$20	\$20	\$20	\$20.71	\$0.71
Inactive Renewal--Resident	\$25	\$25	\$25	\$25.82	\$0.82
Inactive Renewal--Nonresident	\$125	\$125	\$125	\$128.07	\$3.07
Inactive Renewal 1-90 days late--Resident	\$37.50	\$37.50	\$37.50	\$38.60	\$1.10
Inactive Renewal > than 90 days late--Resident	\$50	\$50	\$50	\$51.38	\$1.38
Inactive Renewal 1-90 days late--Nonresident	\$187.50	\$187.50	\$187.50	\$191.97	\$4.47
Inactive Renewal > than 90 days late--Nonresident	\$250	\$250	\$250	\$255.88	\$5.88
Reciprocal Reinstatement	\$610	\$610	\$610	\$623.98	\$13.98
Change in Status--Resident	\$65	\$65	\$65	\$66.72	\$1.72
Change in Status--Nonresident	\$95	\$95	\$95	\$97.39	\$2.39
Reinstatement--Resident	\$685	\$685	\$685	\$700.67	\$15.67
Reinstatement--Nonresident	\$775	\$775	\$775	\$792.69	\$17.69
Certificate of Standing--Resident	\$30	\$30	\$30	\$30.93	\$0.93
Certificate of Standing--Nonresident	\$40	\$40	\$40	\$41.16	\$1.16
Replacement or Duplicate Wall Certificate--Resident	\$40	\$40	\$40	\$41.16	\$1.16

Replacement of Duplicate Wall Certificate--Nonresident	\$90	\$90	\$90	\$92.28	\$2.28
Duplicate Pocket Card	\$5	\$5	\$5	\$5.37	\$0.37
Reopen Fee for closed candidate files	\$25	\$25	\$25	\$25.82	\$0.82
Annual Business Registration Fee*****	\$45	\$45	\$45	\$46.27	\$1.27
Business Registration Renewal 1-90 days late*****	\$67.50	\$67.50	\$67.50	\$69.27	\$1.77
Business Registration Renewal > than 90 days late*****	\$90	\$90	\$90	\$92.28	\$2.28
Examination--Record Maintenance	\$25	\$25	\$25	\$25.82	\$0.82
Returned Check Fee	\$25	\$25	\$25	\$25.82	\$0.82

*This fee includes a \$200 professional fee imposed by statute upon initial registration and renewal. The Board is required to annually collect the fee and transfer it to the State Comptroller of Public Accounts who deposits \$150 of each fee into the General Revenue Fund and the remaining \$50 of each fee into the Foundation School Fund.

**Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

***Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

****Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

*****Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.

Figure: 34 TAC §3.834(b)

$$\text{Insurer's Assessment} = \frac{\text{Individual Insurer's Texas Net Direct Premiums Written for the Twelve-Month Period}}{\text{Total of All Insurers' Texas Net Direct Premiums Written for the Twelve-Month Period}} \times \$30 \text{ Million}^*$$

*The amount of the total assessment is the lesser of the total amount that the General Appropriations Act appropriates from the volunteer fire department assistance fund account in the general revenue fund for that state fiscal year or \$30 million.

Figure: 40 TAC §108.1413(c)

DARS ECI Sliding Fee Scale	
Family cost share amount is the total collection of co-pays, co-insurance, deductibles, family fees, and benefits paid by public or private insurance. The family cost share amount must not exceed the actual cost of services. In addition to payments received from insurance, the parent pays co-pays, co-insurance, deductibles, and fees up to the family monthly maximum payment.	
If the adjusted family income is within the following % of the federal poverty guideline:	then the family monthly maximum payment is:
≤ 100%	\$0
>100% to 150%	\$3
>150% to 200%	\$5
> 200% to 250%	\$10
> 250% to 350%	\$20
> 350% to 400%	\$55
> 400%	equal to the full cost of services, not to exceed 5% of family's adjusted gross monthly income
If the parent:	then the family monthly maximum payment equals the:
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate,	full cost of services.
refuses to release personally identifiable information to or give permission to bill a third-party payor,	full cost of services.
provides verification that use of benefits or insurance may result in the following outcomes, as described in 34 CFR §303.520: (1) a decrease in available lifetime coverage or any other insured benefit for the child or parent; (2) an increase in premiums; or (3) a loss of insurance benefits for any member of your family,	family monthly maximum payment based on adjusted family income .

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Local Sales Tax Rate Change Notice Effective July 1, 2013

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2013 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Granite Shoals (Burnet Co)	2027036	.012500	.075000

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporation (4A) will be **reduced** to 3/8 percent and will become effective July 1, 2013 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Cedar Hill (Dallas Co)	2057137	.020000	.082500
Cedar Hill (Ellis Co)	2057137	.020000	.082500

A 1/8 percent special purpose district sales and use tax will become effective July 1, 2013 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Cedar Hill Crime Control District	5057510	.001250	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective July 1, 2013 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Natalia Municipal Development District	5163502	.005000	SEE NOTE 2

NOTE 1: The boundaries of the Cedar Hill Crime Control District are the same as the boundaries for the city of Cedar Hill.

NOTE 2: The Natalia Municipal Development District has the same boundaries as the Natalia extra-territorial jurisdiction, which includes the city of Natalia. Contact the district representative at (830) 663-2926 for additional boundary information.

TRD-201302469
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: June 14, 2013

◆ ◆ ◆
Office of Consumer Credit Commissioner
Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/17/13 - 06/23/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/17/13 - 06/23/13 is 18% for Commercial over \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/13 - 06/30/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/13 - 06/30/13 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201302525

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 18, 2013

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from American Baptist Association Credit Union, Pearland, Texas to amend its Articles of Incorporation relating to principal place of business.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201302558

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 19, 2013

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Reeves County Teachers Credit Union, Pecos, Texas to expand its field of membership. The proposal would permit persons who work or reside in Reeves County, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas (#1) to expand its field of membership. The proposal would permit employees of Janus 1 Unlimited, Inc. DBA McDonald's and their subsidiaries, affiliates or successors, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas (#2) to expand its field of membership. The proposal would permit employees of Jacobs Engineering and their subsidiaries, affiliates or successors who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas (#3) to expand its field of membership. The proposal would permit employees of BMC Software Inc. and their subsidiaries, affiliates or successors, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas (#4) to expand its field of membership. The proposal would permit employees of Just Energy and their subsidiaries, affiliates or successors who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas (#5) to expand its field of membership. The proposal would permit employees of IHI E&C International Corporation and their subsidiaries, affiliates or successors, to be eligible for membership in the credit union.

An application was received from Mesquite Credit Union, Mesquite, Texas to expand its field of membership. The proposal would permit members of The Friends of Consumer Freedom, an association headquartered in Rowlett, Texas, who reside in the Dallas/Fort Worth, Texas metroplex, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located within a 10-mile radius of the branch office located at 9109 Sienna Christus Drive, Missouri City, Texas 77459, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201302557

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 19, 2013

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application for a Merger or Consolidation - Approved

El Paso Corporation Federal Credit Union (Houston) and First Service Credit Union (Houston) - See *Texas Register* issue dated January 25, 2013.

Articles of Incorporation - 50 Years to perpetuity - Approved

Members First Credit Union, Corpus Christi, Texas

TRD-201302559

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 19, 2013

Education Service Center Region 11

Notice of Board Vacancy

The Education Service Center Region 11 (ESC Region 11) Board of Directors Place 1 - Johnson and Somervell Counties is vacant.

At the scheduled Board Meeting on July 15, 2013, the board is expected to consider appointing someone to fill this unexpired term (May 15, 2013 - May 31, 2015). The replacement must reside in either Johnson or Somervell County. Place 1 will then be up for election in 2015.

For more information regarding the Board vacancy or if you know of someone interested who resides in either Johnson or Somervell County, please contact ESC Region 11 Board Chairman J.B. Morgan or Clyde W. Steelman, Jr. at (817) 740-3600.

TRD-201302521

Clyde W. Steelman, Jr.

Executive Director

Education Service Center Region 11

Filed: June 17, 2013

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 29, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 29, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure

at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AAREY COLLONEY, INCORPORATED dba Cheek Grocery Store; DOCKET NUMBER: 2013-0286-PST-E; IDENTIFIER: RN101757391; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: ACME BRICK COMPANY; DOCKET NUMBER: 2013-0419-PST-E; IDENTIFIER: RN100220755; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,619; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: AJWO, INCORPORATED; DOCKET NUMBER: 2013-0602-MLM-E; IDENTIFIER: RN106572894; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: construction site; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15VS90, Part II, Section E.3.(d), and 30 TAC §281.25(a)(4), by failing to post a completed construction site notice (Attachment 4 of the permit) near the main entrance of the site in a location readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction; TPDES General Permit Number TXR15VS90, Part III, Section F.2.(c)(i)(B), Perimeter Controls, and 30 TAC §281.25(a)(4), by failing to install perimeter sediment controls at all down slope boundaries of the construction areas of the site; and 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$2,278; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: ALISHAN's, INCORPORATED dba Brownies; DOCKET NUMBER: 2013-0580-PST-E; IDENTIFIER: RN102051794; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Centex Scrap and Metal, Incorporated; DOCKET NUMBER: 2013-0367-MLM-E; IDENTIFIER: RN105622195; LOCATION: Killeen, Bell County; TYPE OF FACILITY: scrap metal recycling; RULE VIOLATED: 30 TAC §330.15(c) and TWC, §26.121(a)(1), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §281.25(a)(4) and §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number TXR05X877, Part III, Section A(4)(b), by failing to implement good housekeeping measures; and 30 TAC §324.1 and 40 Code of Federal Regulations §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words Used Oil; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Chai's Family Properties, Ltd. dba LBJ Food Mart 3; DOCKET NUMBER: 2013-0476-PST-E; IDENTIFIER: RN102014644; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(7) COMPANY: City of Archer City; DOCKET NUMBER: 2013-0272-MWD-E; IDENTIFIER: RN101721587; LOCATION: Archer, Archer County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010393002, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Castroville; DOCKET NUMBER: 2013-0310-MWD-E; IDENTIFIER: RN101721645; LOCATION: Castroville, Medina County; TYPE OF FACILITY: wastewater treatment facility and land application disposal site; RULE VIOLATED: 30 TAC §210.22(e) and TWC, §26.121(a)(1), TCEQ Permit Number WQ0010952001, Permit Conditions 2.g. and Reuse Authorization Number R10952-001, General Requirements F., by failing to prevent the unauthorized discharge of reclaimed water from an effluent storage pond into water of the state; and 30 TAC §210.34(2) and Reuse Authorization Number R10952-001, Sampling and Analysis, by failing to conduct proper sampling of the reclaimed water prior to distribution; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: City of Henrietta; DOCKET NUMBER: 2013-0626-PWS-E; IDENTIFIER: RN101258978; LOCATION: Henrietta, Clay County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the running annual average; PENALTY: \$480; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Hillsboro; DOCKET NUMBER: 2013-0875-WQ-E; IDENTIFIER: RN104512173; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a

Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: COWPOKES CONVENIENCE STORES, INCORPORATED; DOCKET NUMBER: 2013-0581-PST-E; IDENTIFIER: RN102019015; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: Crocker, Michael; DOCKET NUMBER: 2013-0914-LII-E; IDENTIFIER: RN103404372; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §344.24(a) and §335.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: David E. Harvey Builders, Incorporated; DOCKET NUMBER: 2013-0932-WQ-E; IDENTIFIER: RN106070881; LOCATION: Houston, Harris County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Denny Transport, L.L.C. dba Denny Oil Company; DOCKET NUMBER: 2013-0447-PST-E; IDENTIFIER: RN104267083; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: \$2,350; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: German Vega dba G & C Convenience Store; DOCKET NUMBER: 2013-0582-PST-E; IDENTIFIER: RN101685238; LOCATION: Roma, Starr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Grey Forest Development, LLC; DOCKET NUMBER: 2013-0354-EAQ-E; IDENTIFIER: RN106469372; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(a), by failing to obtain approval of a Contributing Zone Plan (CZP) before beginning a regulated activity over the Edwards Aquifer Contributing Zone; and 30 TAC §213.23(j) and Edwards Aquifer Protection Plan 13-12102901,

Standard Conditions Number 7, by failing to install temporary silt fencing in accordance with best management practices as approved in the CZP; PENALTY: \$4,126; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: H & ROZY, INCORPORATED; DOCKET NUMBER: 2013-0945-PST-E; IDENTIFIER: RN101443059; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: HICHI CORPORATION dba H & L Discount Foods; DOCKET NUMBER: 2012-1284-PST-E; IDENTIFIER: RN102283561; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$7,795; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(19) COMPANY: Himalayan Star, Incorporated; DOCKET NUMBER: 2013-0946-PST-E; IDENTIFIER: RN101569051; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Jon McDonald Custom Homes LP; DOCKET NUMBER: 2013-0974-WQ-E; IDENTIFIER: RN106650849; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 78602-7833, (325) 698-9674.

(21) COMPANY: KHALIL ZOOM IN MARKET, INCORPORATED dba Zoom-In Market 6; DOCKET NUMBER: 2013-0075-PST-E; IDENTIFIER: RN100795681; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: KINGSTREET INVESTMENTS LLC; DOCKET NUMBER: 2013-0706-PST-E; IDENTIFIER: RN103143608; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: L.A.G. PROPERTIES, INCORPORATED dba Sunmart 117; DOCKET NUMBER: 2012-2655-PST-E; IDENTIFIER: RN102048212; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tank; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Lisa Soto; DOCKET NUMBER: 2013-0120-PST-E; IDENTIFIER: RN104751151; LOCATION: Houston, Harris County; TYPE OF FACILITY: property with an underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(a) and (b), by failing to register a UST system with the agency; PENALTY: \$9,350; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Manakamana Properties, Incorporated dba Proctor Grocery; DOCKET NUMBER: 2013-0308-PST-E; IDENTIFIER: RN101431757; LOCATION: Proctor, Comanche County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(26) COMPANY: MIDWAY ARMADILLO CORPORATION dba Midway Truck Stop; DOCKET NUMBER: 2013-1061-PST-E; IDENTIFIER: RN103048799; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: MIKE'S BROADWAY, INCORPORATED dba New Huggy Bears 101; DOCKET NUMBER: 2013-0629-PST-E; IDENTIFIER: RN101889335; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: MISSION PETROLEUM CARRIERS, INCORPORATED; DOCKET NUMBER: 2013-0408-PST-E; IDENTIFIER: RN102453859; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: \$6,358; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: NAVI, Incorporated dba The Hitching Post; DOCKET NUMBER: 2013-0474-PST-E; IDENTIFIER: RN101736007; LOCATION: Marion, Guadalupe County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: New Hope Baptist Church of Jarrell; DOCKET NUMBER: 2013-0585-EAQ-E; IDENTIFIER: RN106589591; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: church with an associated parking lot and driveway; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 339-2929.

(31) COMPANY: NEW MART CORPORATION dba Murphy Food Corner; DOCKET NUMBER: 2013-0389-PST-E; IDENTIFIER: RN101892206; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: NEXTEL OF TEXAS, INCORPORATED; DOCKET NUMBER: 2013-0707-PST-E; IDENTIFIER: RN104998331; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: NIGTON-WAKEFIELD WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0214-PWS-E; IDENTIFIER: RN101219277; LOCATION: Apple Springs, Trinity County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile, maintain, and make available for commission review an accurate and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and

storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.46(f)(2), (3)(A)(ii)(III), (iii), (B)(iii), and (D)(ii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is readily accessible outside the chlorination room; PENALTY: \$1,340; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: Partners In Building LP; DOCKET NUMBER: 2013-0824-WQ-E; IDENTIFIER: RN106643240; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: R & O BUSINESS, INCORPORATED dba Simons Korner II; DOCKET NUMBER: 2013-0186-PST-E; IDENTIFIER: RN101840148; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Ranger Excavating LP; DOCKET NUMBER: 2013-0876-WQ-E; IDENTIFIER: RN106638109; LOCATION: Waco, McLennan County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(37) COMPANY: Shuvam, Incorporated dba Texas Express #2; DOCKET NUMBER: 2013-0466-PST-E; IDENTIFIER: RN102429545; LOCATION: Early, Brown County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(38) COMPANY: Sonny Jai, Incorporated dba Country Stop; DOCKET NUMBER: 2013-0172-PST-E; IDENTIFIER: RN102281417; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$8,501; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(39) COMPANY: Sprint Sand and Clay LLC; DOCKET NUMBER: 2013-0933-WQ-E; IDENTIFIER: RN106182223; LOCATION: Houston, Harris County; TYPE OF FACILITY: sand pit excavating; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: TEJANO ENTERPRISES, INCORPORATED dba Segovia Truck Stop; DOCKET NUMBER: 2013-0423-PST-E; IDENTIFIER: RN101617074; LOCATION: Junction, Kimble County; TYPE OF FACILITY: convenience store and truck stop with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(41) COMPANY: Tuan Quoc Tran dba Crabb River Exxon; DOCKET NUMBER: 2013-0526-PST-E; IDENTIFIER: RN101847101; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Vale Building Group LLC; DOCKET NUMBER: 2013-0940-WQ-E; IDENTIFIER: RN106659733; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(43) COMPANY: WM Resource Recovery & Recycling Center, Incorporated; DOCKET NUMBER: 2013-0104-AIR-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: recycling center; RULE VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.52c(a) and §60.56c(c)(5)(i), Permit Number 24247, Special Conditions Number 7.B., Federal Operating Permit (FOP) Number O3058, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A. and 6, by failing to limit the carbon monoxide concentration to 40 parts per million dry volume, averaged over a 12-hour rolling period and corrected to 7% oxygen,

30 TAC §122.143(4) and §122.146(2), FOP Number O3058, GTC and STC Number 10, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O3058, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period; PENALTY: \$10,826; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Wolf, Brad A.; DOCKET NUMBER: 2013-0930-LII-E; IDENTIFIER: RN105852461; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §344.24(a) and §335.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(45) COMPANY: ZAREEN ENTERPRISES, INCORPORATED dba ZP Mart 1; DOCKET NUMBER: 2013-1060-PST-E; IDENTIFIER: RN102037983; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201302528

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 18, 2013



Notice of Water Quality Applications

The following notices were issued on June 7, 2013 through June 14, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

OXBOW CALCINING LLC which operates the Oxbow Calcining Facility, which produces calcined petroleum coke (SIC 2999), has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001994000, which authorizes the discharge of treated wastewaters and previously monitored effluent (treated domestic wastewater from internal Outfall 101) at an intermittent and flow variable rate via Outfall 001, and treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via Outfall 002. The facility is located at 3901 Coke Dock Road on the West Turning Basin of the Sabine-Neches Ship Channel in the City of Port Arthur, Jefferson County, Texas 77641.

VOPAK TERMINAL DEER PARK INC which operates a bulk liquid storage transshipment terminal has applied for a renewal of TPDES Permit No. WQ0002383000, which authorizes the discharge of stormwater on an intermittent and flow variable basis. The facility is located

at 2759 Independence Parkway South in the City of Deer Park, Harris County, Texas, 77536. The effluent is discharged directly to the Houston Ship Channel Tidal in Segment No. 1006 of the San Jacinto River Basin.

HANSON AGGREGATES LLC which operates The Woodlands Plant, a sand and gravel mining facility, has applied for a renewal of TPDES Permit No. WQ0002502000, which authorizes the discharge of process wastewater, groundwater, and storm water at a daily average flow not to exceed 350,000 gallons per day via Outfall 002. The facility is located at 12541 Sleepy Hollow Road, three and one-half miles east of Interstate Highway 45, and approximately seven miles south of the City of Conroe, Montgomery County, Texas.

STEELY LUMBER CO INC which operates Steely Lumber Wastewater Treatment Plant, a saw mill that produces lumber, wood chips, fractionated wood, and humus, has applied for a renewal of TPDES Permit No. WQ0004249000, which authorizes the discharge of wet decking wastewater, utility wastewater (boiler blowdown), and stormwater runoff via Outfall 001 on an intermittent and flow variable basis. The facility is located at 1405 Southwood Drive, approximately 1.5 miles east of the intersection of U.S. Highway 75 and Southwood Drive and approximately 2.5 miles southeast of the City of Huntsville, Walker County, Texas 77340.

CITY OF MERTZON has applied for a renewal of TCEQ Permit No. WQ0004535000, which authorizes the land application of sewage sludge for beneficial use on 3.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located on the south side of Farm-to-Market Road 2469, 2.5 miles northwest of the intersection of Farm-to-Market Road 2469 and U.S. Highway 67, and 2.4 miles northwest of the City of Mertzton, in Irion County, Texas 76941.

BRENNTAG SOUTHWEST INC which operates a chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0004884000, to authorize the discharge of stormwater at an intermittent and flow-variable rate. The facility is located at 1632 Haden Road, Houston, Harris County, Texas 77015.

OILTANKING HOUSTON LP which operates Oiltanking Houston Terminal, a "for hire" hydrocarbon and chemical product storage and transfer facility, has applied for a major amendment to TPDES Permit No. WQ0004898000 to authorize the discharge of: (a) treated boiler blowdown, treated contact storm water from secondary containment areas for oil tanks, and treated non-contact storm water runoff on an intermittent and flow variable basis via proposed Outfall 002; and (b) contact storm water from secondary containment areas for oil tanks and non-contact storm water runoff on an intermittent and flow variable basis via existing Outfall 003. The facility is located at 15602A Jacintoport Boulevard, approximately 1,500 feet east of the intersection of Jacintoport Boulevard with South Sheldon Road, within the City of Channelview, Harris County, Texas 77015. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF GROVES has applied for a renewal of TPDES Permit No. WQ0010094004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,320,000 gallons per day. The facility is located at 1222 Taft Avenue Extension, Port Arthur, approximately 2,000 feet southeast from the intersection of State Highway 87 and State Highway 73, and adjacent to Taft Avenue Extension in southeast direction from the intersection of State Highway 87 and 73 in Jefferson County, Texas 77642.

CITY OF MCALLEN has applied for a renewal of TPDES Permit No. WQ0010633004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 15,000,000 gallons per day. The facility is located at 2100 West Sprague Street, approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107 in Hildago County, Texas 78504.

CITY OF LA FERIA has applied for a renewal of TPDES Permit No. WQ0010697002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day combined volume from Outfalls 001 and 002. The facility is located on South Rabb Road, approximately 0.6 mile south of U.S. Highway 83 Business in Cameron County, Texas 78559.

CITY OF LONE OAK has applied for a renewal of TPDES Permit No. WQ0010760001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located east of Bull Creek, approximately 0.5 mile south of the intersection of U.S. Highway 69 and Farm-to-Market Road 1571 in Hunt County, Texas 75453.

CITY OF CLEVELAND has applied for a renewal of TPDES Permit No. WQ0010766002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located east of the City of Cleveland, approximately 1.8 miles northeast of the intersection of U.S. Highway 59 and State Highway 321/105 in Liberty County, Texas 77327.

FATIMA FAMILY VILLAGE INC has applied for a renewal of TPDES Permit No. WQ0013767001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 1003 Gulf Bank Road, 0.25 mile north of Gulf Bank Road and 0.5 mile west of Hardy Road in Houston, in Harris County, Texas 77037.

RITA LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0013955001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 6341 East Mount Houston Road, approximately 600 feet north of East Mount Houston Road and approximately 1.3 miles west of the intersection of Farm-to-Market Road 527 and East Mount Houston Road in Harris County, Texas 77050.

SLIDELL INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to TPDES Permit No. WQ0014306001 to move the discharge point approximately 3,100 feet downstream on the unnamed tributary of North Hickory Creek. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1,700 feet north and 300 feet east of the intersection of Farm-to-Market Road 455 and County Road 2822 in Wise County, Texas 76267.

242 LLC has applied for a renewal of TPDES Permit No. WQ0014414001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located approximately 4,600 feet southeast of the intersection of State Highway 242 and Donwick Drive in Montgomery County, Texas 77385.

LAKE MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014598001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 188,000 gallons per day. The facility is located at 1501 1/2 East Freeway, Baytown, approximately 4,300 feet west of Thompson

Road fronting on the north access road of Interstate Highway 10 in Harris County, Texas 77521.

SKYMARK DEVELOPMENT COMPANY INC has applied for a renewal of TPDES Permit No. WQ0014992001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility will be located approximately 2,650 feet west of the intersection of Howell Road and North Street, on the north side of West Fork Chocolate Bayou in Fort Bend County, Texas 77583.

CITY OF GALVESTON applied for a new permit, proposed TPDES Permit No. WQ0010688007, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility will be located at Seawolf Park on Pelican Island approximately 3.5 miles northeast of the Pelican Island Bridge in Galveston County, Texas 77553. The TCEQ Executive Director has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

SOUTH CENTRAL WATER COMPANY has applied for a minor amendment to the TPDES Permit No. WQ0015016001 to authorize the change of the Interim I phase of the existing permit from 0.05 million gallons per day (MGD) to 0.10 MGD and update the 2 hour peak flows for all phases with a peak factor of 1.5 instead of 4.0. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at the southwest intersection of State Highway 72 and New Teal Road, west of New Teal Road in McMullen County, Texas 78072.

HOLIDAY HARBOR WATER/WASTE WATER SUPPLY CORPORATION has applied for a Minor Amendment of TPDES Permit No. WQ0013145001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The Minor Amendment would authorize the permittee to haul sludge from the wastewater treatment facility to the Richey Road Sludge Processing Facility, Permit No. WQ0004810000, or any other facility authorized by the TCEQ to accept sludge, for final processing and disposal. The facility is located approximately 4,000 feet north of the intersection of State Highway 156 and Farm-to-Market Road 224, and approximately 4.2 miles southeast of the intersection of U.S. Highway 190 and State Highway 156 in San Jacinto County, Texas 77364.

TRD-201302560

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 19, 2013



Notice of Water Rights Application

Notice issued June 11, 2013.

WATER USE PERMIT NO. 5259; The Public Utilities Board of Brownsville, P.O. Box 3270, Brownsville, Texas, 78523, Applicant, has applied for an extension of time to commence and complete construction of a dam and reservoir on the Rio Grande, Rio Grande Basin, in Cameron County. The application and partial fees were received on September 4, 2012. Additional fees were received on

December 21, 2012. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 5, 2013. The Executive Director has determined the Applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director completed the technical review of the application and prepared a draft order. The application, technical memoranda, and Executive Director's draft order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302561

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 19, 2013



Request for Nominations - Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for eight individuals to serve on the Municipal Solid

Waste Management and Resource Recovery Advisory Council (Advisory Council) to fill the following positions:

1) a representative from a solid waste management organization composed primarily of commercial operators; 2) a person who is experienced in the management and operation of a composting or recycling facility, or an educator with knowledge of the design and management of solid waste facilities; 3) an elected official from a municipality with a population between 100,000 and 750,000; 4) an elected official from a municipality with a population between 25,000 and 100,000; 5) a representative of the financial community; 6) an elected official from a county with a population less than 150,000; 7) an elected official from a municipality with a population fewer than 25,000; and 8) a representative of the general public.

The Advisory Council was created by the 68th Legislature in 1983. The composition of the Advisory Council is prescribed in §363.041 of the Texas Health and Safety Code.

Upon request from the TCEQ Commissioners, the Advisory Council reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; makes recommendations on matters relating to MSW management; recommends legislation to encourage the efficient management of MSW; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of MSW management and recovery for Texas. The Advisory Council members are required by law to hold at least one meeting every three months. The meetings usually last up to one day and are held in Austin. Some travel reimbursement may be available.

To apply for or to nominate an individual for an Advisory Council position, please complete and submit the Advisory Council application and related materials. The application and additional information are available at: <http://www.tceq.texas.gov/goto/msw/council>.

Nominee evaluations will be made based upon the application, materials submitted, and solid waste management experience. Materials may include a resume, biography, summary of experience, list of publications, recognitions/awards, and letters of reference. Appointments will be made by the TCEQ Commissioners in the fall of 2013.

The Advisory Council application and materials must be postmarked by 5:00 p.m., Friday, July 12, 2013, and delivered to Mr. Steve Hutchinson of the TCEQ Waste Permits Division, P.O. Box 13087, MC 126, Austin, Texas 78711-3087. If submitting by overnight mail, please send to: Texas Commission on Environmental Quality, Waste Permits Division, Attention: Steve Hutchinson, 12100 Park 35 Circle, Building A, MC-126, Austin, Texas 78753. Questions regarding the Advisory Council can be directed to Mr. Hutchinson at (512) 239-6716, or e-mail address: steve.hutchinson@tceq.texas.gov.

TRD-201302522

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 18, 2013

◆ ◆ ◆ General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions

affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 10th, through June 17, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on June 19, 2013. The public comment period for this project will close at 5:00 p.m. on July 19, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Linc Energy Operations, Inc.; Location: The project site is located northeast of the Neches River and in the Nelda Stark Unit of the Lower Neches Wildlife Management Area, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Terry, Texas Latitude: 30.06028 North; Longitude -93.94778 West. Project Description: The applicant proposes to hydraulically and mechanically dredge a 122.92-acre area, consisting of linear channels to access various exploratory well sites. The site was formerly excavated and constructed as an oil exploration field which has since silted in due to lack of maintenance. The applicant proposes to excavate approximately 858,503 cubic yards of dredged material from 114 acres of unvegetated canals and 8.92 acres of wetlands, to re-open the canal system. The applicant proposed to place 394,901 cubic yards of dredged material onto 52.96 acres of dredged material banks and open water, to repair the banks, and to create containment levees for beneficial use of dredged material. The applicant also proposes to place 463,602 cubic yards of dredged material into open water to create a 143.37-acre beneficial use area. Hay bale weirs will be installed to allow for dewatering of the beneficial use area and for intertidal exchange during high tides. CMP Project No.: 13-1194-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

Applicant: Corpus Christi Liquefaction LLC, and Cheniere Corpus Christi Pipeline LP; Location: The project site is located adjacent to the LaQuinta Turning Basin of the LaQuinta Channel on the northern shore of Corpus Christi Bay, approximately 2 miles south of Gregory, in Nueces and San Patricio Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Ingleside, Texas. Latitude: 27.88503 North; Longitude -97.27047 West. Project Description: The applicant proposes to amend their existing permit to construct an LNG export facility in lieu of the currently authorized import facility. The facility would consist of a dual LNG vessel berth with associated docks, and a construction dock for loading/offloading. Approximately 4.8 million cubic yards of sand/clay material would be dredged by hydraulic and mechanical means for construction of the facility. Dredged material would be placed in one of two nearby upland confined dredged material placement areas (DMPAs). Permanent total impacts for the revised project would be 27.45 acres, which include 9.17 acres of sea-grass, 6.72 acres of black mangrove, 5.91 acres of smooth cordgrass, 0.99 acres of vegetated tidal flats, and 2.76 acres of non-vegetated tidal flats, from filling, dredging, a pipeline, and overwater structures. This is an additional 12.67 acres of permanent jurisdictional impacts over what was authorized for the original project design. A 23-mile-long 48-inch-diameter pipeline to convey natural gas to the facility would also be constructed. This portion of the project is unchanged from the original authorization. Less than 0.01 acre of wetlands will be permanently impacted by construction of the pipeline. There would be no temporary loss of wetlands due to pipeline construction. No wetlands would be converted from one type to another wetland type. All water

bodies within the pipeline route would be crossed with open-cut or bore method and would be restored to pre-construction status. CMP Project No.: 13-1167-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201302572

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 19, 2013



Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

Coastal Boundary Survey by David L. Nesbitt, dated July 10, 2012, being the littoral boundary between the Juan Jose Balli Grant, Abstract 1998 and State of Texas, Laguna Madre Submerged Land Tract No. 60, situated on the south shore of Packery Channel, adjacent to and extending northerly from the north right-of-way line of Texas State Highway No. 361, a copy of the survey plat being recorded in Cabinet 68, Page 6, Map Records of Nueces County, Texas

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, General Land Office, by telephone at (512) 463-5212, e-mail bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201302475

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 14, 2013



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed 24-Hour Residential Child Care Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, July 16, 2013, at 10:30 a.m.

to receive public comment on proposed statewide rates for the 24-Hour Residential Child Care (24 RCC) program and rates under foster care redesign for Single Source Continuum Contractors (SSCCs) providing services in the 24 RCC program operated by the Department of Family and Protective Services (DFPS). The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed payment rates before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for statewide 24 RCC and rates for foster care redesign, including blended foster care rates and a rate ceiling for exceptional care for two catchment areas. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the proposed amended rate setting methodology for 24 RCC at 1 TAC §355.7103, Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements. The proposed amendment to §355.7103 will be published in the June 28, 2013, issue of the *Texas Register*. These changes are being made in accordance with the 2014-2015 General Appropriations Act (Article II, Senate Bill 1, 83rd Legislature, Regular Session, 2013, DFPS Rider 40), which appropriated \$30.5 million general revenue funds for the State Fiscal Year 2014-2015 biennium for rate increases for 24 RCC.

Briefing Package. A briefing package describing the proposed payment rates will be available at www.hhsc.state.tx.us/rad/rate-packets.shtml on June 28, 2013. Interested parties also may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302523

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 18, 2013



Notice of Public Hearing on Proposed Attendant Compensation Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 15, 2013, at

1:00 p.m. to receive public comment on proposed rates for Levels 26 through 35 under the Attendant Compensation Rate Enhancement in the Community Based Alternatives - Home and Community Support Services; Community Based Alternatives - Assisted Living/Residential Care; Community Living Assistance and Support Services; Day Activity and Health Services; Deaf-Blind with Multiple Disabilities Waiver; Primary Home Care; and Residential Care programs operated by the Department of Aging and Disability Services (DADS). In addition, this hearing will receive public comment on proposed base rate increases for Primary Home Care, Community Attendant Services and Family Care Non-Priority Personal Attendant Services, Day Activity and Health Services; Residential Care; and all associated Consumer Directed Services. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for Levels 26 through 35 for all of the programs listed above and base rate increases for Primary Home Care, Community Attendant Services and Family Care Non-Priority Personal Attendant Services, Day Activity and Health Services; Residential Care; and all associated Consumer Directed Services. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates incorporate appropriations provisions from the 2014-2015 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Special Provisions for all Health and Human Services Agencies, Section 61), which appropriated \$20 million in general revenue funds for the 2014-2015 biennium for additional Attendant Compensation Rate Enhancement Levels for the DADS' community care programs listed above and the HHSC Star+Plus program. In addition, Section 61 appropriated funds to support increases in the base wage of personal attendants to \$7.50 per hour in fiscal year 2014, and to \$7.86 per hour in fiscal year 2015. The proposed payment rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may

be sent by overnight mail or hand delivered to the Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751-2399.

TRD-201302529

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 18, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rate for Truman W. Smith Children's Care Center

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 15, 2013, at 3:00 p.m. to receive public comment on the proposed rate for the Truman W. Smith Children's Care Center, a nursing facility which is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Department of Aging and Disability Services. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center from \$226.66 a day to \$238.50 a day. The proposed rate will be effective September 1, 2013, and was determined in accordance with the rate setting methodology listed below under "Methodology and Justification."

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

Briefing Package. A briefing package describing the proposed payment rate will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302526

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 18, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 15, 2013, at 8:30 a.m. to receive public comment on proposed interim per diem Medicaid reimbursement rates for small and large, state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim reimbursement rates for small and large state-operated ICF/IIDs operated by DADS. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodology listed below under "Methodology and Justification."

Small State-Operated ICF/IID - Proposed interim daily rate: \$628.31

Large State-Operated ICF/IID - Medicaid Only clients Proposed interim daily rate: \$706.00

Large State-Operated ICF/IID Dual-eligible Medicaid/Medicare clients - Proposed interim daily rate: \$683.29

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Methodology.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin,

Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

TRD-201302556
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 18, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Supported Employment, Employment Assistance and Consumer Directed Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, July 16, 2013, at 8:30 a.m. to receive public comment on proposed rates for employment assistance (EA) for the Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Home and Community-based Services (HCS), and Medically Dependent Children Program (MDCP) waiver programs; for supported employment (SE) in the CBA and MDCP waiver programs; for consumer-directed services (CDS) SE and EA in the Deaf-Blind with Multiple Disabilities (DBMD), CLASS and HCS waiver programs; and for CDS nursing services in the HCS program. These programs are operated by the Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for the programs and services listed above. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates incorporate provisions from Section 1, S.B. 45, 83rd Legislature, Regular Session, 2013 and directives from DADS's executive staff. HHSC's proposed payment rates were calculated in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter A, §355.114, Consumer Directed Services Payment Option; Subchapter E, §355.502, Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers; §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.507, Reimbursement Methodology for the Medically Dependent Children Program; §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; and Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302524

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 18, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Texas Home Living

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 15, 2013, at 10:00 a.m. to receive public comment on proposed payment rate adjustments for the Texas Home Living (TxHmL) waiver program operated by the Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adjust rates for the Texas Home Living Program. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates incorporate appropriations provisions from the 2014-15 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, HHSC Rider 51(b)(23)), which requires HHSC to align TxHmL rates with Home and Community-based Services rates. The proposed payment rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs, and were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs, and Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302554

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 18, 2013



Notice of Public Hearing on Proposed Nursing Facility Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 15, 2013, at 3:00 p.m. to receive public comment on Nursing Facility (NF) and Hospice-NF Medicaid payment rates. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase NF and Hospice-NF payment rates by an average of two percent for fiscal year 2014. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed Medicaid payment rates incorporate appropriations provisions from the 2014-2015 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Department of Aging and Disability Services, Rider 40), which appropriated funds to provide for a two percent increase for NF and Hospice-NF payment rates.

HHSC's proposed payment rates were calculated in accordance with the rate setting methodology at 1 TAC Chapter 355, Subchapter A, §355.307, Reimbursement Setting Methodology; §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology - Liability Insurance Costs. These rates and associated minute requirements were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation,

Regulations or Economic Factors Affect Costs, and 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on June 28, 2013. Interested parties also may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at Sarah.Hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to Sarah.Hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302570

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 19, 2013



Notice of Public Hearing on Proposed Youth Empowerment Services Waiver Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, July 16, 2013 at 1:00 p.m. to receive public comment on proposed payment rates for Community Living Supports - Bachelor's Level, Community Living Supports - Master's Level, Family Supports Services, Paraprofessional Services, the Pre-Engagement Fee, and In-home Respite, in the Youth Empowerment Services (YES) waiver program operated by the Texas Department of State Health Services (DSHS). In addition, rates are proposed for two services that are being added to the YES waiver, Supported Employment (SE) and Employment Assistance (EA). The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed rates before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rate increases for the existing YES waiver services listed above and rates for the new SE and EA services to be provided through the YES waiver. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates incorporate appropriations provisions from the 2014-2015 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Arti-

cle II, Department of State Health Services), which appropriated \$24.4 million in general revenue funds for the 2014-2015 biennium for rate increases for the YES waiver. The proposed payment rates also incorporate direction from Section 1, S.B. 45, 83rd Legislature, Regular Session, 2013, which requires DSHS to add SE and EA to the YES waiver service array. The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC §355.9060, Reimbursement Methodology for the Youth Empowerment Services Waiver Program.

Briefing Package. A briefing package describing the proposed payment rates will be available at www.hhsc.state.tx.us/rad/rate-packets.shtml on June 28, 2013. Interested parties also may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302571

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 19, 2013



Department of State Health Services

Amendment to the Schedules of Controlled Substances

This amendment to the Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services on June 13, 2013, and will become effective 21 days after the date of publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) placed the substance 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule I of the federal schedules of controlled substances under the authority of the United States Controlled Substances Act (USCSA) effective April 12, 2013. This final rule was published in the *Federal Register*, Volume 78, Number 71, pages 21818-21825. The Administrator of the DEA has taken this action based on a scheduling recommendation from the Assistant Secretary for Health of the Department of Health and Human Services and the following:

- (1) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone) has a high potential for abuse;
- (2) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone) has no currently accepted medical use in treatment in the United States; and
- (3) there is a lack of accepted safety for use of 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone) under medical supervision.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and, in the capacity as Commissioner of the Department of State Health Services, David L. Lakey, M.D. hereby orders that the substance 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible be moved from Schedule I temporarily scheduled substances to Schedule I Hallucinogenic Substances.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

Schedule I opium derivatives

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4 bromo 2,5 dimethoxyamphetamine (some trade or other names: 4 bromo-2,5 dimethoxy alpha methylphenethylamine; 4 bromo 2,5 DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5 dimethoxyamphetamine (some trade or other names: 2,5 dimethoxy alpha methylphenethylamine; 2,5 DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5 methoxy 3,4 methylenedioxy-amphetamine;

(10) 4 methoxyamphetamine (some trade or other names: 4 methoxy alpha methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1 methyl 4 phenyl 1,2,5,6 tetrahydro pyridine (MPTP);

(12) 4 methyl 2,5 dimethoxyamphetamine (some trade and other names: 4 methyl 2,5 dimethoxy alpha methyl phenethylamine; "DOM"; and "STP");

(13) 3,4 methylenedioxy-amphetamine;

(14) 3,4 methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4 methylenedioxy-N ethylamphetamine (some trade or other names: N ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5 trimethoxy amphetamine;

(17) N hydroxy 3,4 methylenedioxyamphetamine (Also known as N hydroxy MDA);

(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl) 5 hydroxyindole; 3 (2 dimethylaminoethyl) 5 indolol; N,N dimethylserotonin; 5 hydroxy N,N dimethyltryptamine; map-pine);

(20) Diethyltryptamine (some trade and other names: N,N Diethyl-tryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N ethyl 1 phenylcyclohexylamine; (1 phenylcyclohexyl) ethylamine; N (1 phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7 Ethyl 6,6-beta, 7,8,9,10,12,13 octhydro 2 methoxy 6,9 methano-5H-pyrido[1',2':1,2] aze-pino [5,4 b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiper-azine), its optical isomers, salts and salts of isomers;

(28) N ethyl 3 piperidyl benzilate;

(29) N methyl 3 piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3 Hexyl 1 hydroxy 7,8,9,10 tetrahydro 6,6,9 trimethyl 6H dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1 phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous ex-tractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological ac-tivity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(36) Thiophene analog of phencyclidine (some trade or other names: 1 [1 (2 thienyl) cyclohexyl] piperidine; 2 thienyl analog of phencyclidine; TPCP);

(37) 1 [1 (2 thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

(38) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

(39) 3,4-methylenedioxypyrovalerone (MDPV);

(40) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other names: 2C-E);

(41) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

(42) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

(43) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

(44) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

(45) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

(46) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names: 2C-H);

(47) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N);

(48) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P); and

*(49) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methy-lone).

Schedule I stimulants

Schedule I depressants

Schedule I Cannabimimetic agents

Schedule I temporarily listed substances subject to emergency scheduling.

Changes to the schedules are designated by a single asterisk (*)

TRD-201302532

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: June 18, 2013

◆ ◆ ◆

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	BSA Hospital, L.L.C. dba The Don and Sybil Harrington Cancer Center a Department of Baptist St. Anthony's Hospital	L06556	Amarillo	00	05/31/13
Throughout TX	Furmanite America, Inc.	L06554	Port Lavaca	00	05/22/13
Throughout TX	Liberty Town USA 2	L06555	Houston	00	05/24/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	107	05/20/13
Amarillo	Texas Oncology, P.A. dba Texas Oncology Cancer Center-Amarillo	L06149	Amarillo	06	05/29/13
Andrews	Lotus, L.L.C.	L05147	Andrews	26	05/28/13
Austin	Westlake Surgical, L.P. dba The Hospital at Westlake Medical Center	L06234	Austin	03	05/31/13
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	11	05/24/13
Bedford	Texas Oncology, P.A. dba Edwards Cancer Center	L05550	Bedford	27	05/24/13
College Station	Energy Laboratories, Inc.	L06171	College Station	05	05/24/13
College Station	Energy Laboratories, Inc.	L06171	College Station	06	05/31/13
Dallas	Joseph A. Meacham, M.D., P.A. dba Heart Center of Dallas	L05942	Dallas	02	05/21/13
Dallas	Rosa of North Dallas, L.L.C.	L06186	Dallas	07	05/16/13
Dallas	Rosa of North Dallas, L.L.C.	L06186	Dallas	08	05/30/13
El Paso	The University of Texas at El Paso Radiation Safety Office	L00159	El Paso	71	05/29/13
El Paso	El Paso Healthcare System, Ltd. dba Del Sol Medical Center	L02551	El Paso	60	05/31/13
El Paso	Tenet Hospital Limited dba Sierra Providence East Medical Center	L06152	El Paso	12	05/17/13
Fort Worth	Sterigenics U.S., L.L.C.	L03851	Fort Worth	40	05/29/13
Fort Worth	Texas Oncology, P.A.	L05606	Fort Worth	25	05/20/13
Fort Worth	Fort Worth Surgicare Partners, Ltd. dba Baylor Surgicare Hospital at Fort Worth	L05668	Fort Worth	12	05/24/13
Harlingen	VHS Harlingen Hospital Company, L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	04	05/24/13
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	100	05/24/13
Houston	Baylor College of Medicine	L00680	Houston	108	05/22/13
Houston	Baker Hughes Oilfield	L04452	Houston	53	05/31/13
Houston	Leachman Cardiology Associates, P.A.	L05229	Houston	14	05/17/13
Houston	Memorial MRI and Diagnostic, L.L.C. dba Memorial Nuclear Imaging, L.P.	L05997	Houston	10	05/28/13
Houston	Radiomedix, Inc. dba Radiomedix	L06044	Houston	09	05/24/13
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	27	05/15/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Cardiac Intervention Specialists, P.A.	L06466	Houston	02	05/22/13
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	93	05/17/13
Lubbock	Methodist Diagnostic Imaging dba Covenant Diagnostic Imaging	L03948	Lubbock	48	05/28/13
Lubbock	University Medical Center	L04719	Lubbock	122	05/29/13
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	87	05/31/13
Lufkin	The Heart Institute of East Texas, P.A.	L04147	Lufkin	21	05/17/13
McKinney	Raytheon Company	L05632	McKinney	08	05/31/13
Nacogdoches	The Healthcare Ltd. a Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	48	05/31/13
New Braunfels	Mission Cardiovascular Consultants, P.A. dba New Braunfels Cardiology	L05463	New Braunfels	12	05/24/13
Pasadena	Albermarle Corporation	L04072	Pasadena	20	05/17/13
Richardson	Truglo, Inc.	L05519	Richardson	10	05/28/13
San Angelo	Shannon Medical Center	L02174	San Angelo	63	05/30/13
San Angelo	San Angelo Hospital, L.P. dba San Angelo Community Medical Center	L02487	San Angelo	51	05/30/13
San Angelo	Regional Employee Assistance Program dba Community Medical Associates	L06172	San Angelo	05	05/16/13
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Management	L01962	San Antonio	66	05/16/13
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	21	05/24/13
Sugar Land	Thermo Process Instruments, L.P.	L03524	Sugar Land	84	05/21/13
Sugar Land	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Sugar Land	41	05/28/13
Throughout TX	Fox NDE, L.L.C.	L06411	Abilene	06	05/29/13
Throughout TX	Texas Department of Transportation Construction Division Materials and Pavements Section	L00197	Austin	166	05/21/13
Throughout TX	Texas Department of Transportation	L00197	Austin	166	05/21/13
Throughout TX	Weatherford International, L.L.C.	L04286	Benbrook	96	05/24/13
Throughout TX	NDE Solutions, L.L.C.	L05879	Bryan	33	05/23/13
Throughout TX	Nondestructive and Visual Inspection, L.L.C.	L06162	Carthage	10	05/16/13
Throughout TX	Wilson Inspection X-Ray Services, Inc.	L04469	Corpus Christi	71	05/30/13
Throughout TX	Qualspec Services, L.L.C. dba Qualspec	L06351	Corpus Christi	05	05/17/13
Throughout TX	National Inspection Services, L.L.C.	L05930	Crowley	34	05/31/13
Throughout TX	Mas-Tek Engineering and Associates, Inc.	L04864	Dallas	13	05/23/13
Throughout TX	Ferracon Consultants, Inc.	L05268	Dallas	42	05/28/13
Throughout TX	PSC Industrial Outsourcing, L.P.	L06155	Deer Park	02	05/29/13
Throughout TX	Pavetex Engineering and Testing, Inc.	L05533	Dripping Springs	18	05/24/13
Throughout TX	Professional Services Industries, Inc.	L02476	El Paso	25	05/17/13
Throughout TX	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	13	05/24/13
Throughout TX	T. Smith Inspection and Testing, L.L.C.	L05697	Fort Worth	13	05/17/13
Throughout TX	The CK Group, Inc.	L06476	Fort Worth	02	05/30/13
Throughout TX	Brazos Pipe and Steel Fabricators, Inc.	L02186	Freeport	30	05/30/13
Throughout TX	Uranium Energy Corporation	L06127	Goliad	04	05/31/13
Throughout TX	Uranium Energy Corporation	L06127	Goliad	03	05/23/13
Throughout TX	RLN Corporation	L06433	Hitchcock	06	05/24/13
Throughout TX	Fugro Consultants, Inc.	L00058	Houston	59	05/24/13
Throughout TX	Baker Hughes Oilfield Operations, Inc. dba Baker Atlas	L00446	Houston	166	02/23/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Baker Hughes Oilfield Operations, Inc. dba Baker Atlas	L00446	Houston	167	05/30/13
Throughout TX	Metco	L03018	Houston	215	05/30/13
Throughout TX	Material Inspection Technology, Inc.	L05672	Houston	39	05/23/13
Throughout TX	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	88	05/20/13
Throughout TX	Nondestructive and Visual Inspection, L.L.C.	L06162	Houston	11	05/30/13
Throughout TX	Baker Hughes Oilfield Operations, Inc.	L06453	Houston	06	05/24/13
Throughout TX	Savoy Technical Services, Inc.	L06502	Houston	01	05/24/13
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	101	05/29/13
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	04	05/21/13
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	05	05/24/13
Throughout TX	J. Z. Russell Industries, Inc.	L06459	Nederland	06	05/31/13
Throughout TX	Qualspec Services, Inc. dba Qualspec	L06432	Oyster Creek	05	05/17/13
Throughout TX	Fugro Consultants, Inc.	L04322	Pasadena	107	05/31/13
Throughout TX	Calibration Solutions, L.L.C.	L06447	Round Rock	02	05/21/13
Throughout TX	Zachry Industrial, Inc.	L01995	San Antonio	29	05/16/13
Throughout TX	Apex Geoscience, Inc.	L04929	Tyler	44	05/24/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	185	05/30/13
Tyler	Sigal Heart Center	L05704	Tyler	08	05/30/13
Webster	CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center	L01680	Webster	88	05/30/13
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	114	05/28/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Medi Physics, Inc. dba G.E. Healthcare	L05517	Houston	22	05/21/13
Throughout TX	P & S Perforators, Inc.	L02396	Victoria	28	05/23/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fort Worth	Dr. Marilyn King Rankine dba Marilyn King Rankine, M.D.	L06170	Fort Worth	01	05/28/13
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	10	05/23/13
Pasadena	Equistar	L04409	Pasadena	10	05/17/13
Throughout TX	Longview Asphalt, Inc.	L04827	Longview	10	05/22/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201302441
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 13, 2013

Heart of Texas Council of Governments

9-1-1 Voice Recording Demonstrations

The Heart of Texas Council of Governments (HOTCOG) is seeking vendors to provide demonstrations for 9-1-1 voice recording equipment on July 30, 2013 at 1514 S. New Road, Waco, Texas.

Interested Parties are requested to respond by 4:00 p.m., July 12, 2013 of their intent to provide information regarding 9-1-1 voice recording products.

For a list of demo criteria, please contact Kristine Hill at Kristine.hill@hot.cog.tx.us. Questions may be directed to Kristine at (254) 292-1800.

TRD-201302503
Claudette Yates
Administrator
Heart of Texas Council of Governments
Filed: June 17, 2013

Texas Department of Housing and Community Affairs

Notice of Public Hearings for the Community Services Block Grant State Application and Plan for Fiscal Years 2014 - 2015

In accordance with the U.S. Department of Health and Human Services' requirement for the Community Services Block Grant (CSBG) and Texas Government Code, Chapter 2105, Subchapter B, the Texas Department of Housing and Community Affairs (TDHCA) is conducting public hearings. The primary purpose of the hearings is to solicit comments on the proposed Texas 2014 - 2015 Community Services Block Grant State Application and Plan (draft Application/Plan) which describes the proposed use and distribution of CSBG funds for Federal Fiscal Years 2014 and 2015. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to the State's CSBG eligible entities and not more than five percent will be used for state administration, including support for planning, monitoring, and for the provision of training and technical assistance. The remaining five percent will be utilized to fund state discretionary projects/initiatives and for disaster assistance recovery.

The draft Application/Plan was presented and approved by the TDHCA Board of Directors on June 13, 2013. The document has been posted and is available for review on the Department's website at <http://www.tdhca.state.tx.us/community-affairs/csbgi/index.htm> or may be obtained by contacting the Texas Department of Housing and Community Affairs at P.O. Box 13941, Austin, Texas 78711-3941 or by phone at (512) 475-3905.

Public hearings on the draft Application/Plan will be held as follows:

Tuesday, July 9, 2013 at 10:30 a.m. in Room #116 at the TDHCA headquarters office located at 221 East 11th Street, Room #116 in Austin, Texas 78701;

Wednesday, July 10, 2013 at 11:00 a.m. at the headquarters of Gulf Coast Community Services Association at 9320 Kirby Drive, Room #112, Houston, Texas 77054;

Wednesday, July 10, 2013 at 6:30 p.m. at City of San Antonio, Claude W. Black Community Center, 2805 East Commerce Street, Live Oak Room-23A, San Antonio, Texas 78203; and

Thursday, July 11, 2013 at 6:30 p.m. at the City of Fort Worth, Southside Community Center, 959 East Rosedale, Fort Worth, Texas 78203.

At the hearings, persons may submit public comment on the draft Application/Plan either through oral testimony or written testimony. A representative from TDHCA will be present at the hearings to explain the planning process and receive comments from interested citizens and affected groups regarding the draft Application/Plan.

The public comment period to accept comments regarding the draft Application/Plan will be open from June 14, 2013 through July 12, 2013. Comments concerning the draft Application/Plan may be provided in writing or by oral testimony at one of the public hearings or may be submitted to the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941, or by email to rita.garza@tdhca.state.tx.us, or by fax to (512) 475-3935. **Comments are due no later than 5:00 p.m., Friday, July 12, 2013.** Any questions regarding the public comment process or the CSBG program may be directed to Rita D. Gonzales-Garza, CSBG Program Administrator, in the Community Affairs Division at (512) 475-3905 or rita.garza@tdhca.state.tx.us.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least three (3) days before the scheduled hearing at (512) 475-3943 or Relay Texas at 1-800-735-2989 so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes by phone at (512) 475-4577 or by e-mail at jorge.reyes@tdhca.state.tx.us at least three (3) days before the hearing so that appropriate arrangements can be made.

Aviso de Audiencia Pública sobre la Aplicación y el Plan Estatal para los Años Fiscal Federal 2014 - 2015 del Community Services Block Grant

Conforme con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para el programa federal del Community Services Block Grant (CSBG, por sus siglas en inglés) y el Capítulo 2105 del Código del Gobierno de Texas, el Departamento de Vivienda y Asuntos Comunitarios de Texas (el "Departamento") conducirá cuatro audiencias públicas. El propósito principal de estas audiencias es para solicitar comentario público sobre el anteproyecto de la Aplicación y el Plan Estatal para los Años Fiscal Federal (FFY, por sus siglas en inglés) 2014 - 2015 que detalla el propuesto uso y distribución de los fondos federales para los años fiscales federales (FFY) 2014 - 2015. Según requiere la ley federal, no más del 90% de los fondos serán distribuidos a las agencias elegibles que reciben fondos de CSBG y no más del 5% se utilizará para la administración estatal del programa, incluyendo actividades para la planificación, seguimiento del progreso o cumplimiento y para proveer entrenamiento y asistencia técnica. El restante 5% se utilizará para proyectos e iniciativas especiales y de demostración de CSBG para proveer asistencia en casos de desastres naturales o artificiales y proveer entrenamiento y asistencia técnica a los contratistas de CSBG.

El anteproyecto de la Aplicación y el Plan Estatal para los Años Fiscal Federal (FFY) 2014 - 2015 del Community Services Block Grant (CSBG) será presentado a la junta directiva del Departamento el 13 de junio del 2013. Una vez aprobado por la junta directiva,

el documento estará disponible en el sitio web del Departamento en <http://www.tdhca.state.tx.us/community-affairs/csbg/index.htm> o poniéndose en contacto con el Departamento de Vivienda y Asuntos Comunitarios de Texas, 221 East 11th Street, Austin, Texas 78701 o por teléfono al (512) 475-3905.

Las audiencias públicas sobre el anteproyecto de la Aplicación y el Plan Estatal para los Años Fiscal Federal 2014 - 2015 del Community Services Block Grant (CSBG) se han programado de la manera siguiente:

Martes, 9 de julio del 2013, a las 10:30 a.m. Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en inglés) 221 East 11th Street (Calle 11 Este), Sala 116 Austin, Texas 78701

Miércoles, 10 de julio del 2013, a las 11:00 a.m. Gulf Coast Community Services Association 9320 Kirby Drive, Sala 112 Houston, Texas 77054

Miércoles, 10 de julio del 2013, a las 6:30 p.m. City of San Antonio, Claude W. Black Community Center 2805 East Commerce Street, Sala Live Oak 23A San Antonio, Texas 78203

Jueves, 11 de julio del 2013, a las 6:30 p.m. City of Fort Worth, Southside Community Center 959 East Rosedale, Salas 1,2,3 Fort Worth, Texas 76104

Un representante del Departamento estará presente para explicar el proceso de planificación y recibir comentario público de personas interesadas respecto al anteproyecto de la Aplicación y el Plan Estatal para los Años Fiscal Federal (FFY) 2014 - 2015 del Community Services Block Grant (CSBG). Si tiene preguntas, comuníquese con Rita D. Gonzales-Garza, Administrador del programa CSBG al (512) 475-1435 o envíe un correo electrónico a: rita.garza@tdhca.state.tx.us. Comentarios sobre la Aplicación y el Plan Estatal para los Años Fiscal Federal (FFY) 2014 - 2015 del Community Services Block Grant (CSBG) pueden ser presentados en forma escrita o testimonio oral en cualquiera de las audiencias públicas o por correo al Texas Department of Housing and Community Affairs, Atención: Rita Garza, P.O. Box 13941, Austin, Texas 78711-3941 o pueden enviarse a través de correo electrónico a rita.garza@tdhca.state.tx.us o por fax al (512) 475-3935 empezando el 14 de junio del 2013 y no mas tarde de las 5:00 de la tarde, Viernes, 12 de julio del 2013. Cualquier pregunta relacionada con el proceso de audiencia pública o el programa CSBG pueden ser dirigidos a la División de Asuntos Comunitarios del Departamento.

Personas que necesiten equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la ley sobre la Ley de Estadounidenses con Discapacidades (ADA, por sus siglas en inglés), al (512) 475-3943 o al Relay Texas al 1-800-662-4954 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201302533

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 18, 2013



Release of 2013 Notice of Funding Availability for the Redevelopment of a Site Located in Dickinson, Texas

SUMMARY. The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to \$3,000,000 in funding from revenue generated by the Tax Credit Assistance Program (TCAP) for the new construction of affordable multifamily rental housing for low-income households in the City of Dickinson in Galveston County. The site is located at 3914 Wagon Road, Dickinson, TX 77539 and consists of approximately 2.02 acres. Applications are requested in accordance with the guidelines stated in the Notice of Funding Availability (NOFA) for the redevelopment of at minimum 34 affordable rental units that will be encumbered by a HOME Land Use Restriction Agreement (the "HOME LURA").

The NOFA was posted on our website on Tuesday, June 18, 2013. Individuals or firms interested in submitting an application should visit our website at: <http://www.tdhca.state.tx.us/> under the "What's New" section or visit <http://esbd.cpa.state.tx.us/>, for a complete copy of the NOFA. Throughout the application round, all questions relating to this NOFA must be submitted to the Department in writing to Colton Sanders (colton.sanders@tdhca.state.tx.us).

DEADLINE FOR SUBMISSION. The deadline for application submission in response to the NOFA is 5:00 p.m., Central Daylight Saving Time, MONDAY, JULY 22, 2013. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion that it is in the best interest of the Department to do so.

PLACE AND METHOD OF QUALIFICATION DELIVERY. Applications shall be delivered to:

Texas Department of Housing and Community Affairs

Asset Management Division

Attention: Misael Arroyo

Mailing Address:

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-2596

TRD-201302534

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 18, 2013



Texas Lottery Commission

Instant Game Number 1526 "Wild Winnings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1526 is "WILD WINNINGS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1526 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1526.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000, \$25,000,

01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and WILD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1526 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
WILD SYMBOL	WILD
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$25,000	25 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$16.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$25,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1526), a seven (7) digit Pack number and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1526-0000001-001.

K. Pack - A Pack of "WILD WINNINGS" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD WINNINGS" Instant Game No. 1526 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures and the requirements set out on the back of each Instant Ticket. A prize winner in the "WILD WINNINGS" Instant Game is determined once the latex on the Ticket is scratched off to expose 20 (twenty) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "WILD" Play Symbol, the player wins the prize for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 20 (twenty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. On winning and Non-Winning Tickets, the top cash prize of \$25,000 and the \$1,000 prize will each appear at least once, except on Tickets winning eight (8) times.

E. No duplicate, Non-Winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

H. No duplicate, WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "WILD" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "WILD" Play Symbol will automatically win the prize amount directly below the "WILD" Play Symbol on a Ticket.

K. The "WILD" Play Symbol will never appear more than once on a Ticket.

L. The "WILD" Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "WILD" Play Symbol, no YOUR NUMBERS Play Symbols will match any of the WINNING NUMBERS Play Symbols.

N. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 2 and \$2, 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 30 and \$30).

O. On all Tickets, a Prize Symbol will not appear more than two (2) times except as required by the prize structure to create multiple wins.

P. On Non-Winning Tickets, a WINNING NUMBER Play Symbol will never match a YOUR NUMBER Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD WINNINGS" Instant Game prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$16.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD WINNINGS" Instant Game prize of \$1,000 or \$25,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD WINNINGS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WILD WINNINGS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "WILD WINNINGS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make

payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1526. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1526 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	624,000	9.62
\$5	304,000	19.74
\$6	144,000	41.67
\$10	192,000	31.25
\$15	16,000	375.00
\$16	48,000	125.00
\$20	32,000	187.50
\$30	4,600	1,304.35
\$50	2,825	2,123.89
\$100	1,046	5,736.14
\$1,000	16	375,000.00
\$25,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1526 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1526, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401 and all final decisions of the Executive Director.

TRD-201302440

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 13, 2013



Instant Game Number 1569 "I Love Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1569 is "I LOVE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1569 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1569.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STACK

OF MONEY SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1569 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STACK OF MONEY SYMBOL	WINALL
\$2.00	TWOS
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1569), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1569-0000001-001.

K. Pack - A Pack of "I LOVE CASH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "I LOVE CASH" Instant Game No. 1569 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "I LOVE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBER Play Symbols, the player wins the PRIZE for that number. If a player reveals a "STACK OF MONEY" Play Symbol, the player wins all 10 PRIZES! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

C. The "STACK OF MONEY" (win all) Play Symbol will never appear more than once on a Ticket.

D. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

E. There will be no correlation between the matching Play Symbols and the prize amount.

F. The "STACK OF MONEY" (win all) Play Symbol will be used only as dictated by the prize structure.

G. When the "STACK OF MONEY" (win all) Play Symbol appears, there will be no occurrence of any YOUR NUMBERS Play Symbols matching to a WINNING NUMBERS Play Symbol.

H. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

I. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

J. No more than 2 matching non-winning Prize Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "I LOVE CASH" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "I LOVE CASH" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "I LOVE CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "I LOVE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "I LOVE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1569. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1569 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	792,960	8.93
\$4	566,400	12.50
\$5	84,960	83.33
\$10	99,120	71.43
\$20	84,960	83.33
\$50	23,600	300.00
\$100	8,083	875.91
\$1,000	89	79,550.56
\$20,000	8	885,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1569 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1569, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201302569
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 19, 2013

Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.320 relating to "All or Nothing" On-Line Game Rule will be held on Wednesday, July 17, 2013, at 11:00 a.m. at 611 E. 6th Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Eric Williams at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201302510

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 17, 2013

North Central Texas Council of Governments

Request for Proposals for the Blacklands Corridor Feasibility Study

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting consultant services for the Blacklands Corridor Feasibility Study. This multi-modal feasibility study will evaluate the need for a new transportation facility along or near the Northeast Texas Rural Rail Transportation District (NETEX) right-of-way from IH 30 in Hunt County to the President George Bush Turnpike in Dallas County. The study will also identify phases for potential project implementation and provide an analysis of the Texas Turnpike Corporation's proposal for a toll road in the Blacklands Corridor between US 69 in Greenville and SH 78 in Lavon. This corridor has been identified for near-term continued development and evaluation in the Mobility 2035 - 2013 Update, and the results of this feasibility study will be incorporated into the development of the next Metropolitan Transportation Plan.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, July 19, 2013, to Chad McKeown, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, June 28, 2013. NCTCOG encourages participation by disadvantaged

business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201302562

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: June 19, 2013

Public Utility Commission of Texas

Announcement of Application for a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 17, 2013, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Coyote Cable, LLC for a State-Issued Certificate of Franchise Authority, Project Number 41593.

The requested SICFA service area consists of the city limits of Comfort, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41593.

TRD-201302552

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 18, 2013

Announcement of Application for a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 17, 2013, for a state-issued certificate of franchise authority

(SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Coyote Cable, LLC for a State-Issued Certificate of Franchise Authority, Project Number 41594.

The requested SICFA service area consists of the city limits of La Ver-
nia, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41594.

TRD-201302553

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 18, 2013

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 14, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Ultra Communications Group, LLC for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 41584.

Applicant seeks approval to amend State-Issued Certificate of Franchise Authority (SICFA) No. 90082 for the transfer of control of Ultra Communications Group, LLC from Ultra Communications Holdings, LLC to Telecommunications Management, LLC.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41584.

TRD-201302551

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 18, 2013

Notice of Application for Review of the Cost of Decommissioning

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 13, 2013, for review of the cost of decommissioning Units 1 and 2 of the South Texas Project.

Docket Style and Number: Application of NRG South Texas LP for Review of the Cost of Decommissioning Units 1 and 2 of the South Texas Project. Docket Number 41580.

The Application: NRG South Texas LP (NRG) filed an application for review by the commission of the annual cost of decommissioning Units 1 and 2 of the South Texas Project Electric Generating Station (STP). A copy of the latest "Decommissioning Cost Analysis for the South Texas Project Electric Generating Station 60-Year Operating Life" (the 2013 study) is included with the application as Exhibit WAC-1 to the direct testimony of William A. Cloutier, Jr. Pursuant to P.U.C. Substantive Rule §25.303(f)(4)(A), NRG seeks commission approval of the updated funding analysis of the decommissioning cost study for its 44.0% interest in STP Units 1 and 2.

NRG requests that the commission (1) approve the proposed annual funding amounts for the two nuclear decommissioning trusts related to the ownership interest of NRG in STP Units 1 and 2; (2) approve the creation of new "DOE Recovery" subaccounts; (3) approve the amended and restated NRG STP decommissioning trust agreements for the 30.8% trust and the 13.2% trust; and (4) such other and further relief to which NRG may show itself entitled.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41580.

TRD-201302555
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 7, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of the Texas Telephone Association Price Cap Carriers for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41570.

The Application: Applicant seeks a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. Texas Telephone Association (TTA) price cap carriers seek a one-year extension of the deadline until July 1, 2014.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41570.

TRD-201302545
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 7, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of the Texas Telephone Association Rate of Return Carriers for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41571.

The Application: Applicant seeks a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. Texas Telephone Association (TTA) rate of return carriers seek a one-year extension of the deadline until July 1, 2014.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41571.

TRD-201302546
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 7, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Application of Plateau Telecommunications, Inc. (TX RSA 3 Limited Partnership) and Texas RSA 7B3 L.P. d/b/a Peoples Wireless Services for Exemption from P.U.C. Substantive Rule §26.402(d) Regarding the Filing of a Five-Year Plan or Extension of the Timeline for Filing Such a Plan. Docket Number 41572.

The Application: Applicant seeks a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. Plateau Telecommunications, Inc. (TX RSA 3 Limited Partnership) and Texas RSA 7B3 L.P. d/b/a Peoples Wireless Services seek a one-year extension of the deadline until July 1, 2014.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41572.

TRD-201302547

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 10, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of Texas Statewide Telephone Cooperative, Inc. for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41573.

The Application: Applicant seeks a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. Texas Statewide Telephone Cooperative, Inc. (TSTCI) member companies seek a one-year extension of the deadline until July 1, 2014.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41573.

TRD-201302548
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 11, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Application of CGKC&H #2 Rural, L.P. d/b/a West Central Wireless & d/b/a Right Wireless, CT Cube, L.P. d/b/a West Central Wireless & d/b/a Right Wireless, Mid-Tex Cellular, Ltd., and Texas RSA 15B2, L.P. d/b/a Five Star Wireless & d/b/a Right Wireless for Waiver of Requirement in P.U.C. Substantive Rule §26.402. Docket Number 41574.

The Application: The companies seek a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. The companies seek a one-year extension of the deadline until July 1, 2014.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41574.

TRD-201302549
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 12, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of Texas Rural CLECS for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41579.

The Application: Applicants seek a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission (FCC). Pursuant to the rule, the report shall be filed by July 1, 2013; however, the FCC has changed the filing date to July 1, 2014. On March 5, 2013, the FCC issued an order clarifying that because the high cost support received by competitive local exchange carriers (CLECs) will be phased out, CLECs are not required to file new five-year plans and that CLECs who have plans on file are required to file updates to those plans during the time for which support continues. Texas Rural CLECs request that they be allowed to file only those updates which are to be filed with the FCC and request clarification that they are not required to file new plans pursuant to P.U.C. Substantive Rule §26.402.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41579.

TRD-201302550
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of CenturyTel of San Marcos, Inc. d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41585.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41585. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-

3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41585.

TRD-201302537

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆

Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41586.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41586. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41586.

TRD-201302538

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆

Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41587.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41587. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY)

may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41587.

TRD-201302539

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆

Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of CenturyTel of Port Aransas, Inc. d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41588.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41588. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41588.

TRD-201302540

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆

Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of Central Telephone Company of Texas d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41589.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41589. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41589.

TRD-201302541

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆
**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214**

Notice is given to the public of the filing on June 14, 2013, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 5, 2013.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a CenturyLink for Approval of LRIC Study for Convenience Fee Charge Pursuant to P.U.C. Subst. R. §26.214, Docket Number 41590.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 41590. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 41590.

TRD-201302542
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2013

◆ ◆ ◆
South East Texas Regional Planning Commission

Notice of Request for Proposals Alternative Fuels Study

The South East Texas Regional Planning Commission (SETRPC) of Hardin, Jefferson and Orange Counties, Texas, is requesting proposals for the development of a Regional Alternative Fuel and Technology Utilization and Feasibility Study. The funds available for the completion of this project total \$150,000. The desired completion date for this project is August of 2014.

The Request for Proposals (RFP) can be downloaded from the SETRPC Website at www.setrpc.org.

Proposals must be properly sealed, marked and received no later than 2:00 p.m. CST on July 17, 2013. Proposals received after this time will not be considered and will be returned to the proposer unopened. All other proposals will be publicly opened and announced at 2:30 p.m. CST on July 17, 2013, in the SETRPC-Transportation Conference Room at 2210 Eastex Freeway, Beaumont, Texas 77703.

TRD-201302454
Bob Dickinson
Director, Transportation and Environmental Resources
South East Texas Regional Planning Commission
Filed: June 13, 2013

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Big Spring, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

Current Project: City of Big Spring. TxDOT CSJ No.: 13HGBIGSP.
Scope: Provide engineering/design services to:

1. Construct 12-unit T-hangar
2. Construct HAT for new T-hangar

The DBE goal for the current project is 9 percent. TxDOT Project Manager is Paul Slusser.

The City of Big Spring reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Big Spring McMahon-Wrinkle Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for current scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 23, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted.

Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201302544

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 18, 2013



Aviation Division - Request for Qualifications for Professional Services

The Town of Addison, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: Town of Addison Addison Municipal Airport. TxDOT CSJ No. 13MPADDSN. Scope: Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport and may include input from the Addison Airport Strategic Plan as well as the North Central Texas Council of Governments General Aviation and Heliport System Plan.

There is no DBE requirement. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider

submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Seven completed copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than 4:00 p.m. on **July 24, 2013**. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The Town of Addison's Evaluation Criteria for this project is below. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

Evaluation Criteria - Addison Airport Master Plan Update

1. Qualifications, Capabilities, and Recent Experience (50 points)

- a. Qualifications and experience of key personnel (16 points)
- b. Relevant airport master planning experience
 - i. Relevant GA airport experience demonstrating understanding of GA airport operations and how GA airport planning differs from air carrier airport planning (8 points)
 - ii. Demonstrated experience incorporating local preferences and accounting for unique or unusual local conditions in airport master planning, including but not limited to strategies for redevelopment (10 points)
 - iii. Master planning experience at air carrier airports (4 points)
- c. Planning support capabilities (6 points) - demonstrated capabilities necessary for the support of airport master planning including strategic, financial, and business planning
- d. Favorable references (6 points)

2. Schedule (20 points)

- a. Does the proposed planning team have sufficient time to devote to this project in order to meet the schedule submitted in the proposal? (8 points)
- b. Is the proposed schedule realistic and appropriate to accomplish the project? (12 points)

3. Proposed Technical/Planning Approach (30 points)

- a. Demonstrated knowledge of existing planning resources including but not limited to the Regional GA/Heliport System Plan, regional and local air traffic patterns and characteristics, obstruction surveys, and the Addison Airport Strategic Plan (10 points)

b. Does the proposed planning approach take local conditions and preferences into account and provide adequate opportunities for community input? Considering that Addison Airport is almost completely developed, does the proposed approach adequately address specific issues associated with the need for redevelopment? (15 points)

c. Does the proposed planning approach incorporate unique or creative approaches to addressing issues and meeting local needs? (5 points)

TRD-201302519

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 17, 2013



Notice of Availability - Loop 375 (Border Highway West) in El Paso County

On June 7, 2013, a Record of Decision (ROD) was issued for the Abbreviated Final Environmental Impact Statement (FEIS) for Loop 375 (Border Highway West Extension) from Racetrack Drive to United States Highway 54 (US 54) in El Paso County, Texas. Border Highway West Extension, as proposed, is a four-lane, controlled access tolled facility. The approximate distance of the Border Highway West Extension is 9 miles, of which 7 miles will be tolled. The purpose of the proposed project is to improve system capacity, reliability, and regional system linkage.

The signed ROD identifies Revised Preferred Alternative 2 as the selected alternative for construction of the Border Highway West Extension. It also presents the basis for the decision, summarizes the mitigation measures that will be incorporated into the project, and summarizes the responses to comments received on the FEIS.

The ROD is available for viewing or copying at the Texas Department of Transportation's website, www.txdot.gov or at the Texas Department of Transportation's El Paso District Office located at 13301 Gateway West, El Paso, Texas. For further information on the Border Highway West Extension, please contact Eduardo Calvo at (915) 790-4322 or Carlos Swonke, P.G., at (512) 416-2734.

TRD-201302543

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 18, 2013



Texas State University System

Notice of Intent - Indefinite Quantity Facilities Program Management

The Texas State University System (TSUS), invites consultants experienced in providing program management services for planning, design and construction of facilities for Owner's System Office ("System Office") and its component institutions ("Components") on a hourly fee

basis as needed by the Owner. Such services are expected to be required but are not limited to pre-project planning, estimating, programming, design, bid and construction phases of the project delivery process or any other service that is beneficial in the delivery of facilities. The Consultant will render these services both to the System Office and directly to a Component as needed, with no minimum or maximum amount of services specified. In particular, the Consultant must be prepared to assign at least one person with significant project planning and management experience to be available as needed to support the oversight efforts of the System Office. A contract with the selected firm will be issued as an indefinite quantity contract with a three-year initial term and an option for the Owner to extend the contract for one additional year. The total value of the Contract will not exceed \$2,000,000.

Any firm intending to respond to this notice should obtain Request for Proposals No. 758-13-00020 and follow the instructions for responding contained therein. A copy of the RFP may be downloaded from the Electronic Business Daily at <http://esbd.cpa.state.tx.us/>. Select "TX STATE UNIV SYST. BOARD OF REGENTS-758" from the drop-down menu.

The deadline for proposals is July 16, 2013, 3:00 p.m. (C.D.T). The award date is anticipated to be on or before September 1, 2013. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of an RFQ. Neither this notice nor the RFQ commits TSUS to pay for any costs incurred prior to the award of a contract or agreement.

As provided in Texas Government Code, §22.54.028(c), The Chancellor, as chief executive officer of TSUS, has found that the consulting services sought pursuant to this notice are both reasonable and necessary to TSUS and its components. The System Office of TSUS, with a very limited staff, has the responsibility of managing \$250 million or more in construction projects at any given time at up to nine different locations. The Chancellor finds that System Office personnel can manage these projects in a cost-effective manner by utilizing the planning and construction expertise of consultants on an as-needed basis only. The alternative is to hire a permanent, full-time salaried employee and to pay benefits and other administrative costs occasioned by such a hire. The proposed structure (hiring a consultant for the duration of the task only) will allow TSUS to have the benefit of expertise that it could not reasonably expect to find in a salaried employee and to pay only for the services that it needs to support existing staff's administrative efforts. Moreover, staffing in the planning and construction area at the component institutions differs widely, and the Chancellor finds that the proposed consulting arrangement will be cost effective in providing assistance to components on an as-needed basis.

TRD-201302520

Peter E. Graves

Vice Chancellor for Contract Administration

Texas State University System

Filed: June 17, 2013



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printcdsc

